United Nations PCNICC/2000/1/Add.1

Preparatory Commission for the International Criminal Court

Distr.: General
2 November 2000

Original: English

New York
13-31 March 2000
12-30 June 2000

# Report of the Preparatory Commission for the International Criminal Court

**Addendum**

# Part I
# Finalized draft text of the Rules of Procedure and Evidence*

## Explanatory note

The Rules of Procedure and Evidence are an instrument for the application of the Rome Statute of the International Criminal Court, to which they are subordinate in all cases. In elaborating the Rules of Procedure and Evidence, care has been taken to avoid rephrasing and, to the extent possible, repeating the provisions of the Statute. Direct references to the Statute have been included in the Rules, where appropriate, in order to emphasize the relationship between the Rules and the Rome Statute, as provided for in article 51, in particular, paragraphs 4 and 5.

In all cases, the Rules of Procedure and Evidence should be read in conjunction with and subject to the provisions of the Statute.

The Rules of Procedure and Evidence of the International Criminal Court do not affect the procedural rules for any national court or legal system for the purpose of national proceedings.

In connection with rule 41, the Preparatory Commission considered whether the application of the rule would be facilitated by including a provision in the Regulations of the Court that at least one of the judges of the Chamber in which the case is heard knows the official language used as a working language in a given case. The Assembly of States Parties is invited to give further consideration to this issue.

* Incorporating document PCNICC/2000/INF/3/Add.1 and corrections to the Arabic, French and Spanish versions submitted by Governments pursuant to paragraph 16 of the Introduction.

00-72406 (E) 201100

# Rules of Procedure and Evidence

## Contents


| *Rule* | | *Page* |
|---|---|---|
| | **Chapter 1. General provisions** | |
| 1. | Use of terms | 12 |
| 2. | Authentic texts | 12 |
| 3. | Amendments | 12 |
| | **Chapter 2. Composition and administration of the Court** | |
| | Section I. General provisions relating to the composition and administration of the Court | |
| 4. | Plenary sessions | 13 |
| 5. | Solemn undertaking under article 45 | 13 |
| 6. | Solemn undertaking by the staff of the Office of the Prosecutor, the Registry, interpreters and translators | 14 |
| 7. | Single judge under article 39, paragraph 2 (b) (iii) | 14 |
| 8. | Code of Professional Conduct | 14 |
| | Section II. The Office of the Prosecutor | |
| 9. | Operation of the Office of the Prosecutor | 15 |
| 10. | Retention of information and evidence | 15 |
| 11. | Delegation of the Prosecutor's functions | 15 |
| | Section III. The Registry | |
| | Subsection 1. General provisions relating to the Registry | |
| 12. | Qualifications and election of the Registrar and the Deputy Registrar | 15 |
| 13. | Functions of the Registrar | 16 |
| 14. | Operation of the Registry | 16 |
| 15. | Records | 16 |
| | Subsection 2. Victims and Witnesses Unit | |
| 16. | Responsibilities of the Registrar relating to victims and witnesses | 17 |
| 17. | Functions of the Unit | 17 |
| 18. | Responsibilities of the Unit | 18 |
| 19. | Expertise in the Unit | 19 |

Subsection 3. Counsel for the defence

20. Responsibilities of the Registrar relating to the rights of the defence ... 19
21. Assignment of legal assistance ... 20
22. Appointment and qualifications of Counsel for the defence ... 21

Section IV. Situations that may affect the functioning of the Court

Subsection 1. Removal from office and disciplinary measures

23. General principle ... 21
24. Definition of serious misconduct and serious breach of duty ... 21
25. Definition of misconduct of a less serious nature ... 22
26. Receipt of complaints ... 22
27. Common provisions on the rights of the defence ... 23
28. Suspension from duty ... 23
29. Procedure in the event of a request for removal from office ... 23
30. Procedure in the event of a request for disciplinary measures ... 23
31. Removal from office ... 24
32. Disciplinary measures ... 24

Subsection 2. Excusing, disqualification, death and resignation

33. Excusing of a judge, the Prosecutor or a Deputy Prosecutor ... 24
34. Disqualification of a judge, the Prosecutor or a Deputy Prosecutor ... 24
35. Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused ... 25
36. Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar ... 25
37. Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar ... 26

Subsection 3. Replacements and alternate judges

38. Replacements ... 26
39. Alternate judges ... 26

Section V. Publication, languages and translation

40. Publication of decisions in official languages of the Court ... 27
41. Working languages of the Court ... 27
42. Translation and interpretation services ... 27
43. Procedure applicable to the publication of documents of the Court ... 28

**Chapter 3. Jurisdiction and admissibility**

Section I. Declarations and referrals relating to articles 11, 12, 13 and 14

44. Declaration provided for in article 12, paragraph 3 ... 29

45. Referral of a situation to the Prosecutor ... 29

Section II. Initiation of investigations under article 15

46. Information provided to the Prosecutor under article 15, paragraphs 1 and 2 ... 29
47. Testimony under article 15, paragraph 2 ... 29
48. Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3 ... 30
49. Decision and notice under article 15, paragraph 6 ... 30
50. Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation ... 30

Section III. Challenges and preliminary rulings under articles 17, 18 and 19

51. Information provided under article 17 ... 31
52. Notification provided for in article 18, paragraph 1 ... 31
53. Deferral provided for in article 18, paragraph 2 ... 31
54. Application by the Prosecutor under article 18, paragraph 2 ... 32
55. Proceedings concerning article 18, paragraph 2 ... 32
56. Application by the Prosecutor following review under article 18, paragraph 3 ... 32
57. Provisional measures under article 18, paragraph 6 ... 33
58. Proceedings under article 19 ... 33
59. Participation in proceedings under article 19, paragraph 3 ... 33
60. Competent organ to receive challenges ... 34
61. Provisional measures under article 19, paragraph 8 ... 34
62. Proceedings under article 19, paragraph 10 ... 34

**Chapter 4. Provisions relating to various stages of the proceedings**

Section I. Evidence

63. General provisions relating to evidence ... 35
64. Procedure relating to the relevance or admissibility of evidence ... 35
65. Compellability of witnesses ... 36
66. Solemn undertaking ... 36
67. Live testimony by means of audio or video-link technology ... 36
68. Prior recorded testimony ... 36
69. Agreements as to evidence ... 37
70. Principles of evidence in cases of sexual violence ... 37
71. Evidence of other sexual conduct ... 37
72. In camera procedure to consider relevance or admissibility of evidence ... 38

73. Privileged communications and information ... 38
74. Self-incrimination by a witness ... 39
75. Incrimination by family members ... 41

Section II. Disclosure

76. Pre-trial disclosure relating to prosecution witnesses ... 41
77. Inspection of material in possession or control of the Prosecutor ... 41
78. Inspection of material in possession or control of the defence ... 42
79. Disclosure by the defence ... 42
80. Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3 ... 42
81. Restrictions on disclosure ... 43
82. Restrictions on disclosure of material and information protected under article 54, paragraph 3 (e) ... 43
83. Ruling on exculpatory evidence under article 67, paragraph 2 ... 44
84. Disclosure and additional evidence for trial ... 44

Section III. Victims and witnesses

Subsection 1. Definition and general principle relating to victims

85. Definition of victims ... 45
86. General principle ... 45

Subsection 2. Protection of victims and witnesses

87. Protective measures ... 45
88. Special measures ... 46

Subsection 3. Participation of victims in the proceedings

89. Application for participation of victims in the proceedings ... 47
90. Legal representatives of victims ... 47
91. Participation of legal representatives in the proceedings ... 48
92. Notification to victims and their legal representatives ... 49
93. Views of victims or their legal representatives ... 50

Subsection 4. Reparations to victims

94. Procedure upon request ... 50
95. Procedure on the motion of the Court ... 50
96. Publication of reparation proceedings ... 51
97. Assessment of reparations ... 51
98. Trust Fund ... 51

99. Cooperation and protective measures for the purpose of forfeiture under articles 57, paragraph 3 (e), and 75, paragraph 4 ... 52

Section IV. Miscellaneous provisions

100. Place of the proceedings ... 52

101. Time limits ... 53

102. Communications other than in writing ... 53

103. Amicus curiae and other forms of submission ... 53

**Chapter 5. Investigation and prosecution**

Section I. Decision of the Prosecutor regarding the initiation of an investigation under article 53, paragraphs 1 and 2

104. Evaluation of information by the Prosecutor ... 54

105. Notification of a decision by the Prosecutor not to initiate an investigation ... 54

106. Notification of a decision by the Prosecutor not to prosecute ... 54

Section II. Procedure under article 53, paragraph 3

107. Request for review under article 53, paragraph 3 (a) ... 55

108. Decision of the Pre-Trial Chamber under article 53, paragraph 3 (a) ... 55

109. Review by the Pre-Trial Chamber under article 53, paragraph 3 (b) ... 56

110. Decision by the Pre-Trial Chamber under article 53, paragraph 3 (b) ... 56

Section III. Collection of evidence

111. Record of questioning in general ... 56

112. Recording of questioning in particular cases ... 57

113. Collection of information regarding the state of health of the person concerned ... 58

114. Unique investigative opportunity under article 56 ... 58

115. Collection of evidence in the territory of a State Party under article 57, paragraph 3 (d) ... 58

116. Collection of evidence at the request of the defence under article 57, paragraph 3 (b) ... 59

Section IV. Procedures in respect of restriction and deprivation of liberty

117. Detention in the custodial State ... 59

118. Pre-trial detention at the seat of the Court ... 60

119. Conditional release ... 60

120. Instruments of restraint ... 61

Section V. Proceedings with regard to the confirmation of charges under article 61

121. Proceedings before the confirmation hearing ... 61

122. Proceedings at the confirmation hearing in the presence of the person charged ... 63

123. Measures to ensure the presence of the person concerned at the confirmation hearing ... 63

124. Waiver of the right to be present at the confirmation hearing ..... 64
125. Decision to hold the confirmation hearing in the absence of the person concerned ..... 64
126. Confirmation hearing in the absence of the person concerned ..... 65

Section VI. Closure of the pre-trial phase

127. Procedure in the event of different decisions on multiple charges ..... 65
128. Amendment of the charges ..... 65
129. Notification of the decision on the confirmation of charges ..... 66
130. Constitution of the Trial Chamber ..... 66

**Chapter 6. Trial procedure**

131. Record of the proceedings transmitted by the Pre-Trial Chamber ..... 67
132. Status conferences ..... 67
133. Motions challenging admissibility or jurisdiction ..... 67
134. Motions relating to the trial proceedings ..... 67
135. Medical examination of the accused ..... 68
136. Joint and separate trials ..... 68
137. Record of the trial proceedings ..... 68
138. Custody of evidence ..... 69
139. Decision on admission of guilt ..... 69
140. Directions for the conduct of the proceedings and testimony ..... 69
141. Closure of evidence and closing statements ..... 70
142. Deliberations ..... 70
143. Additional hearings on matters related to sentence or reparations ..... 70
144. Delivery of the decisions of the Trial Chamber ..... 70

**Chapter 7. Penalties**

145. Determination of sentence ..... 72
146. Imposition of fines under article 77 ..... 73
147. Orders of forfeiture ..... 74
148. Orders to transfer fines or forfeitures to the Trust Fund ..... 74

**Chapter 8. Appeal and revision**

Section I. General provisions

149. Rules governing proceedings in the Appeals Chamber ..... 75

Section II. Appeals against convictions, acquittals, sentences and reparation orders

150. Appeal ..... 75

151. Procedure for the appeal ... 75
152. Discontinuance of the appeal ... 76
153. Judgement on appeals against reparation orders ... 76

Section III. Appeals against other decisions

154. Appeals that do not require the leave of the Court ... 76
155. Appeals that require leave of the Court ... 76
156. Procedure for the appeal ... 77
157. Discontinuance of the appeal ... 77
158. Judgement on the appeal ... 77

Section IV. Revision of conviction or sentence

159. Application for revision ... 77
160. Transfer for the purpose of revision ... 78
161. Determination on revision ... 78

**Chapter 9. Offences and misconduct against the Court**

Section I. Offences against the administration of justice under article 70

162. Exercise of jurisdiction ... 79
163. Application of the Statute and the Rules ... 79
164. Periods of limitation ... 79
165. Investigation, prosecution and trial ... 80
166. Sanctions under article 70 ... 80
167. International cooperation and judicial assistance ... 81
168. *Ne bis in idem* ... 81
169. Immediate arrest ... 81

Section II. Misconduct before the Court under article 71

170. Disruption of proceedings ... 81
171. Refusal to comply with a direction by the Court ... 82
172. Conduct covered by both articles 70 and 71 ... 82

**Chapter 10. Compensation to an arrested or convicted person**

173. Request for compensation ... 83
174. Procedure for seeking compensation ... 83
175. Amount of compensation ... 83

**Chapter 11. International cooperation and judicial assistance**

Section I. Requests for cooperation under article 87

176. Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance ..... 84
177. Channels of communication ..... 84
178. Language chosen by States Parties under article 87, paragraph 2 ..... 85
179. Language of requests directed to States not party to the Statute ..... 85
180. Changes in the channels of communication or the languages of requests for cooperation ..... 85

Section II. Surrender, transit and competing requests under articles 89 and 90

181. Challenge to admissibility of a case before a national court ..... 85
182. Request for transit under article 89, paragraph 3 (e) ..... 86
183. Possible temporary surrender ..... 86
184. Arrangements for surrender ..... 86
185. Release of a person from the custody of the Court other than upon completion of sentence ..... 86
186. Competing requests in the context of a challenge to the admissibility of the case ..... 87

Section III. Documents for arrest and surrender under articles 91 and 92

187. Translation of documents accompanying request for surrender ..... 87
188. Time limit for submission of documents after provisional arrest ..... 87
189. Transmission of documents supporting the request ..... 87

Section IV. Cooperation under article 93

190. Instruction on self-incrimination accompanying request for witness ..... 88
191. Assurance provided by the Court under article 93, paragraph 2 ..... 88
192. Transfer of a person in custody ..... 88
193. Temporary transfer of the person from the State of enforcement ..... 88
194. Cooperation requested from the Court ..... 89

Section V. Cooperation under article 98

195. Provision of information ..... 89

Section VI. Rule of speciality under article 101

196. Provision of views on article 101, paragraph 1 ..... 90
197. Extension of the surrender ..... 90

**Chapter 12. Enforcement**

Section I. Role of States in enforcement of sentences of imprisonment and change in designation of State of enforcement under articles 103 and 104


198. Communications between the Court and States ... 91
199. Organ responsible under Part 10 ... 91
200. List of States of enforcement ... 91
201. Principles of equitable distribution ... 92
202. Timing of delivery of the sentenced person to the State of enforcement ... 92
203. Views of the sentenced person ... 92
204. Information relating to designation ... 92
205. Rejection of designation in a particular case ... 93
206. Delivery of the sentenced person to the State of enforcement ... 93
207. Transit ... 93
208. Costs ... 93
209. Change in designation of State of enforcement ... 94
210. Procedure for change in the designation of a State of enforcement ... 94


Section II. Enforcement, supervision and transfer under articles 105, 106 and 107


211. Supervision of enforcement of sentences and conditions of imprisonment ... 94
212. Information on location of the person for enforcement of fines, forfeitures or reparation measures ... 95
213. Procedure for article 107, paragraph 3 ... 95


Section III. Limitation on the prosecution or punishment of other offences under article 108


214. Request to prosecute or enforce a sentence for prior conduct ... 95
215. Decision on request to prosecute or enforce a sentence ... 96
216. Information on enforcement ... 96


Section IV. Enforcement of fines, forfeiture measures and reparation orders


217. Cooperation and measures for enforcement of fines, forfeiture or reparation orders ... 97
218. Orders for forfeiture and reparations ... 97
219. Non-modification of orders for reparation ... 98
220. Non-modification of judgements in which fines were imposed ... 98
221. Decision on disposition or allocation of property or assets ... 98
222. Assistance for service or any other measure ... 98

Section V. Review concerning reduction of sentence under article 110

223. Criteria for review concerning reduction of sentence ..... 99

224. Procedure for review concerning reduction of sentence ..... 99

Section VI. Escape

225. Measures under article 111 in the event of escape ..... 100

# Chapter 1
# General provisions

## Rule 1
## Use of terms

In the present document:

- "article" refers to articles of the Rome Statute;
- "Chamber" refers to a Chamber of the Court;
- "Part" refers to the Parts of the Rome Statute;
- "Presiding Judge" refers to the Presiding Judge of a Chamber;
- "the President" refers to the President of the Court;
- "the Regulations" refers to the Regulations of the Court;
- "the Rules" refers to the Rules of Procedure and Evidence.

## Rule 2
## Authentic texts

The Rules have been adopted in the official languages of the Court established by article 50, paragraph 1. All texts are equally authentic.

## Rule 3
## Amendments

1. Amendments to the rules that are proposed in accordance with article 51, paragraph 2, shall be forwarded to the President of the Bureau of the Assembly of States Parties.

2. The President of the Bureau of the Assembly of States Parties shall ensure that all proposed amendments are translated into the official languages of the Court and are transmitted to the States Parties.

3. The procedure described in sub-rules 1 and 2 shall also apply to the provisional rules referred to in article 51, paragraph 3.

# Chapter 2
# Composition and administration of the Court

## Section I
## General provisions relating to the composition and administration of the Court

### Rule 4
### Plenary sessions

1. The judges shall meet in plenary session not later than two months after their election. At that first session, after having made their solemn undertaking, in conformity with rule 5, the judges shall:

(a) Elect the President and Vice-Presidents;

(b) Assign judges to divisions.

2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, the Rules and the Regulations and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.

3. The quorum for each plenary session shall be two-thirds of the judges.

4. Unless otherwise provided in the Statute or the Rules, the decisions of the plenary sessions shall be taken by the majority of the judges present. In the event of an equality of votes, the President, or the judge acting in the place of the President, shall have a casting vote.

5. The Regulations shall be adopted as soon as possible in plenary sessions.

### Rule 5
### Solemn undertaking under article 45

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:

(a) In the case of a judge:

"I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations.";

(b) In the case of the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court:

"I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions."

2. The undertaking, signed by the person making it and witnessed by the President or a Vice-President of the Bureau of the Assembly of States Parties, shall be filed with the Registry and kept in the records of the Court.

## Rule 6
## Solemn undertaking by the staff of the Office of the Prosecutor, the Registry, interpreters and translators

1. Upon commencing employment, every staff member of the Office of the Prosecutor and the Registry shall make the following undertaking:

> "I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.";

The undertaking, signed by the person making it and witnessed, as appropriate, by the Prosecutor, the Deputy Prosecutor, the Registrar or the Deputy Registrar, shall be filed with the Registry and kept in the records of the Court.

2. Before performing any duties, an interpreter or a translator shall make the following undertaking:

> "I solemnly declare that I will perform my duties faithfully, impartially and with full respect for the duty of confidentiality.";

The undertaking, signed by the person making it and witnessed by the President of the Court or his or her representative, shall be filed with the Registry and kept in the records of the Court.

## Rule 7
## Single judge under article 39, paragraph 2 (b) (iii)

1. Whenever the Pre-Trial Chamber designates a judge as a single judge in accordance with article 39, paragraph 2 (b) (iii), it shall do so on the basis of objective pre-established criteria.

2. The designated judge shall make the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or the Rules.

3. The Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, may decide that the functions of the single judge be exercised by the full Chamber.

## Rule 8
## Code of Professional Conduct

1. The Presidency, on the basis of a proposal made by the Registrar, shall draw up a draft Code of Professional Conduct for counsel, after having consulted the Prosecutor. In the preparation of the proposal, the Registrar shall conduct the consultations in accordance with rule 20, sub-rule 3.

2. The draft Code shall then be transmitted to the Assembly of States Parties, for the purpose of adoption, according to article 112, paragraph 7.

3. The Code shall contain procedures for its amendment.

## Section II
## The Office of the Prosecutor

### Rule 9
### Operation of the Office of the Prosecutor

In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in place regulations to govern the operation of the Office. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry.

### Rule 10
### Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the investigations by his or her Office.

### Rule 11
### Delegation of the Prosecutor's functions

Except for the inherent powers of the Prosecutor set forth in the Statute, *inter alia*, those described in articles 15 and 53, the Prosecutor or a Deputy Prosecutor may authorize staff members of the Office of the Prosecutor, other than those referred to in article 44, paragraph 4, to represent him or her in the exercise of his or her functions.

## Section III
## The Registry

### Subsection 1
### General provisions relating to the Registry

### Rule 12
### Qualifications and election of the Registrar and the Deputy Registrar

1. As soon as it is elected, the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43, paragraph 3, and shall transmit the list to the Assembly of States Parties with a request for any recommendations.

2. Upon receipt of any recommendations from the Assembly of States Parties, the President shall, without delay, transmit the list together with the recommendations to the plenary session.

3. As provided for in article 43, paragraph 4, the Court, meeting in plenary session, shall, as soon as possible, elect the Registrar by an absolute majority, taking into account any recommendations by the Assembly of States Parties. In the event that no candidate obtains an absolute majority on the first ballot, successive ballots shall be held until one candidate obtains an absolute majority.

4. If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President to that effect. The President shall convene a plenary session to decide on the matter. If the Court, meeting in plenary session, decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.

5. The Deputy Registrar shall be elected by the Court, meeting in plenary session, in the same manner as the Registrar.

## Rule 13
## Functions of the Registrar

1. Without prejudice to the authority of the Office of the Prosecutor under the Statute to receive, obtain and provide information and to establish channels of communication for this purpose, the Registrar shall serve as the channel of communication of the Court.

2. The Registrar shall also be responsible for the internal security of the Court in consultation with the Presidency and the Prosecutor, as well as the host State.

## Rule 14
## Operation of the Registry

1. In discharging his or her responsibility for the organization and management of the Registry, the Registrar shall put in place regulations to govern the operation of the Registry. In preparing or amending these regulations, the Registrar shall consult with the Prosecutor on any matters which may affect the operation of the Office of the Prosecutor. The regulations shall be approved by the Presidency.

2. The regulations shall provide for defence counsel to have access to appropriate and reasonable administrative assistance from the Registry.

## Rule 15
## Records

1. The Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court.

2. The Registrar shall also maintain the other records of the Court.

## Subsection 2
## Victims and Witnesses Unit

### Rule 16
### Responsibilities of the Registrar relating to victims and witnesses

1. In relation to victims, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

(a) Providing notice or notification to victims or their legal representatives;

(b) Assisting them in obtaining legal advice and organizing their legal representation, and providing their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings in accordance with rules 89 to 91;

(c) Assisting them in participating in the different phases of the proceedings in accordance with rules 89 to 91;

(d) Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

2. In relation to victims, witnesses and others who are at risk on account of testimony given by such witnesses, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

(a) Informing them of their rights under the Statute and the Rules, and of the existence, functions and availability of the Victims and Witnesses Unit;

(b) Ensuring that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality.

3. For the fulfilment of his or her functions, the Registrar may keep a special register for victims who have expressed their intention to participate in relation to a specific case.

4. Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.

### Rule 17
### Functions of the Unit

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;

(ii) Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures;

(iii) Assisting them in obtaining medical, psychological and other appropriate assistance;

(iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(v) Recommending, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental and non-governmental organizations acting at the request of the Court, as appropriate;

(vi) Cooperating with States, where necessary, in providing any of the measures stipulated in this rule;

(b) With respect to witnesses:

(i) Advising them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) Assisting them when they are called to testify before the Court;

(iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings.

## Rule 18
## Responsibilities of the Unit

For the efficient and effective performance of its work, the Victims and Witnesses Unit shall:

(a) Ensure that the staff in the Unit maintain confidentiality at all times;

(b) While recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services provided to the prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;

(c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of

testimony given by such witnesses, during all stages of the proceedings and thereafter, as reasonably appropriate;

(d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;

(e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

### Rule 19
### Expertise in the Unit

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

(a) Witness protection and security;

(b) Legal and administrative matters, including areas of humanitarian and criminal law;

(c) Logistics administration;

(d) Psychology in criminal proceedings;

(e) Gender and cultural diversity;

(f) Children, in particular traumatized children;

(g) Elderly persons, in particular in connection with armed conflict and exile trauma;

(h) Persons with disabilities;

(i) Social work and counselling;

(j) Health care;

(k) Interpretation and translation.

## Subsection 3
## Counsel for the defence

### Rule 20
### Responsibilities of the Registrar relating to the rights of the defence

1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute. For that purpose, the Registrar shall, *inter alia*:

(a) Facilitate the protection of confidentiality, as defined in article 67, paragraph 1 (b);

(b) Provide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;

(c) Assist arrested persons, persons to whom article 55, paragraph 2, applies and the accused in obtaining legal advice and the assistance of legal counsel;

(d) Advise the Prosecutor and the Chambers, as necessary, on relevant defence-related issues;

(e) Provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence;

(f) Facilitate the dissemination of information and case law of the Court to defence counsel and, as appropriate, cooperate with national defence and bar associations or any independent representative body of counsel and legal associations referred to in sub-rule 3 to promote the specialization and training of lawyers in the law of the Statute and the Rules.

2. The Registrar shall carry out the functions stipulated in sub-rule 1, including the financial administration of the Registry, in such a manner as to ensure the professional independence of defence counsel.

3. For purposes such as the management of legal assistance in accordance with rule 21 and the development of a Code of Professional Conduct in accordance with rule 8, the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.

## Rule 21
## Assignment of legal assistance

1. Subject to article 55, paragraph 2 (c), and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in the Regulations, based on a proposal by the Registrar, following consultations with any independent representative body of counsel or legal associations, as referred to in rule 20, sub-rule 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 22 and the Regulations. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

4. A person choosing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.

5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

### Rule 22
### Appointment and qualifications of Counsel for the defence

1. A counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise.

2. Counsel for the defence engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.

3. In the performance of their duties, Counsel for the defence shall be subject to the Statute, the Rules, the Regulations, the Code of Professional Conduct for Counsel adopted in accordance with rule 8 and any other document adopted by the Court that may be relevant to the performance of their duties.

## Section IV
## Situations that may affect the functioning of the Court

### Subsection 1
### Removal from office and disciplinary measures

### Rule 23
### General principle

A judge, the Prosecutor, a Deputy Prosecutor, the Registrar and a Deputy Registrar shall be removed from office or shall be subject to disciplinary measures in such cases and with such guarantees as are established in the Statute and the Rules.

### Rule 24
### Definition of serious misconduct and serious breach of duty

1. For the purposes of article 46, paragraph 1 (a), "serious misconduct" shall be constituted by conduct that:

(a) If it occurs in the course of official duties, is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Disclosing facts or information that he or she has acquired in the course of his or her duties or on a matter which is *sub judice*, where such disclosure is seriously prejudicial to the judicial proceedings or to any person;

(ii) Concealing information or circumstances of a nature sufficiently serious to have precluded him or her from holding office;

(iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or

(b) If it occurs outside the course of official duties, is of a grave nature that causes or is likely to cause serious harm to the standing of the Court.

2. For the purposes of article 46, paragraph 1 (a), a "serious breach of duty" occurs where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties. This may include, *inter alia*, situations where the person:

(a) Fails to comply with the duty to request to be excused, knowing that there are grounds for doing so;

(b) Repeatedly causes unwarranted delay in the initiation, prosecution or trial of cases, or in the exercise of judicial powers.

## Rule 25
## Definition of misconduct of a less serious nature

1. For the purposes of article 47, "misconduct of a less serious nature" shall be constituted by conduct that:

(a) If it occurs in the course of official duties, causes or is likely to cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Interfering in the exercise of the functions of a person referred to in article 47;

(ii) Repeatedly failing to comply with or ignoring requests made by the Presiding Judge or by the Presidency in the exercise of their lawful authority;

(iii) Failing to enforce the disciplinary measures to which the Registrar or a Deputy Registrar and other officers of the Court are subject when a judge knows or should know of a serious breach of duty on their part; or

(b) If it occurs outside the course of official duties, causes or is likely to cause harm to the standing of the Court.

2. Nothing in this rule precludes the possibility of the conduct set out in sub-rule 1 (a) constituting "serious misconduct" or "serious breach of duty" for the purposes of article 46, paragraph 1 (a).

## Rule 26
## Receipt of complaints

1. For the purposes of article 46, paragraph 1, and article 47, any complaint concerning any conduct defined under rules 24 and 25 shall include the grounds on which it is based, the identity of the complainant and, if available, any relevant evidence. The complaint shall remain confidential.

2. All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations, set

aside anonymous or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations.

## Rule 27
## Common provisions on the rights of the defence

1. In any case in which removal from office under article 46 or disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.

2. The person concerned shall be afforded full opportunity to present and receive evidence, to make written submissions and to supply answers to any questions put to him or her.

3. The person may be represented by counsel during the process established under this rule.

## Rule 28
## Suspension from duty

Where an allegation against a person who is the subject of a complaint is of a sufficiently serious nature, the person may be suspended from duty pending the final decision of the competent organ.

## Rule 29
## Procedure in the event of a request for removal from office

1. In the case of a judge, the Registrar or a Deputy Registrar, the question of removal from office shall be put to a vote at a plenary session.

2. The Presidency shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation adopted in the case of a judge, and any decision adopted in the case of the Registrar or a Deputy Registrar.

3. The Prosecutor shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation he or she makes in the case of a Deputy Prosecutor.

4. Where the conduct is found not to amount to serious misconduct or a serious breach of duty, it may be decided in accordance with article 47 that the person concerned has engaged in misconduct of a less serious nature and a disciplinary measure imposed.

## Rule 30
## Procedure in the event of a request for disciplinary measures

1. In the case of a judge, the Registrar or a Deputy Registrar, any decision to impose a disciplinary measure shall be taken by the Presidency.

2. In the case of the Prosecutor, any decision to impose a disciplinary measure shall be taken by an absolute majority of the Bureau of the Assembly of States Parties.

3. In the case of a Deputy Prosecutor:

(a) Any decision to give a reprimand shall be taken by the Prosecutor;

(b) Any decision to impose a pecuniary sanction shall be taken by an absolute majority of the Bureau of the Assembly of States Parties upon the recommendation of the Prosecutor.

4. Reprimands shall be recorded in writing and shall be transmitted to the President of the Bureau of the Assembly of States Parties.

### Rule 31
### Removal from office

Once removal from office has been pronounced, it shall take effect immediately. The person concerned shall cease to form part of the Court, including for unfinished cases in which he or she was taking part.

### Rule 32
### Disciplinary measures

The disciplinary measures that may be imposed are:

(a) A reprimand; or

(b) A pecuniary sanction that may not exceed six months of the salary paid by the Court to the person concerned.

## Subsection 2
## Excusing, disqualification, death and resignation

### Rule 33
### Excusing of a judge, the Prosecutor or a Deputy Prosecutor

1. A judge, the Prosecutor or a Deputy Prosecutor seeking to be excused from his or her functions shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.

2. The Presidency shall treat the request as confidential and shall not make public the reasons for its decision without the consent of the person concerned.

### Rule 34
### Disqualification of a judge, the Prosecutor or a Deputy Prosecutor

1. In addition to the grounds set out in article 41, paragraph 2, and article 42, paragraph 7, the grounds for disqualification of a judge, the Prosecutor or a Deputy Prosecutor shall include, *inter alia*, the following:

(a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;

(b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;

(c) Performance of functions prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.

2. Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned, who shall be entitled to present written submissions.

3. Any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber.

## Rule 35
## Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused

Where a judge, the Prosecutor or a Deputy Prosecutor has reason to believe that a ground for disqualification exists in relation to him or her, he or she shall make a request to be excused and shall not wait for a request for disqualification to be made in accordance with article 41, paragraph 2, or article 42, paragraph 7, and rule 34. The request shall be made and the Presidency shall deal with it in accordance with rule 33.

## Rule 36
## Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties of the death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar.

### Rule 37
### Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall communicate to the Presidency, in writing, his or her decision to resign. The Presidency shall inform, in writing, the President of the Bureau of the Assembly of States Parties.

2. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall endeavour to give notice of the date on which his or her resignation will take effect at least six months in advance. Before the resignation of a judge takes effect, he or she shall make every effort to discharge his or her outstanding responsibilities.

## Subsection 3
## Replacements and alternate judges

### Rule 38
### Replacements

1. A judge may be replaced for objective and justified reasons, *inter alia*:

   (a) Resignation;

   (b) Accepted excuse;

   (c) Disqualification;

   (d) Removal from office;

   (e) Death.

2. Replacement shall take place in accordance with the pre-established procedure in the Statute, the Rules and the Regulations.

### Rule 39
### Alternate judges

Where an alternate judge has been assigned by the Presidency to a Trial Chamber pursuant to article 74, paragraph 1, he or she shall sit through all proceedings and deliberations of the case, but may not take any part therein and shall not exercise any of the functions of the members of the Trial Chamber hearing the case, unless and until he or she is required to replace a member of the Trial Chamber if that member is unable to continue attending. Alternate judges shall be designated in accordance with a procedure pre-established by the Court.

## Section V
## Publication, languages and translation

### Rule 40
### Publication of decisions in official languages of the Court

1. For the purposes of article 50, paragraph 1, the following decisions shall be considered as resolving fundamental issues:

(a) All decisions of the Appeals Division;

(b) All decisions of the Court on its jurisdiction or on the admissibility of a case pursuant to articles 17, 18, 19 and 20;

(c) All decisions of a Trial Chamber on guilt or innocence, sentencing and reparations to victims pursuant to articles 74, 75 and 76;

(d) All decisions of a Pre-Trial Chamber pursuant to article 57, paragraph 3 (d).

2. Decisions on confirmation of charges under article 61, paragraph 7, and on offences against the administration of justice under article 70, paragraph 3, shall be published in all the official languages of the Court when the Presidency determines that they resolve fundamental issues.

3. The Presidency may decide to publish other decisions in all the official languages when such decisions concern major issues relating to the interpretation or the implementation of the Statute or concern a major issue of general interest.

### Rule 41
### Working languages of the Court

1. For the purposes of article 50, paragraph 2, the Presidency shall authorize the use of an official language of the Court as a working language when:

(a) That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or

(b) The Prosecutor and the defence so request.

2. The Presidency may authorize the use of an official language of the Court as a working language if it considers that it would facilitate the efficiency of the proceedings.

### Rule 42
### Translation and interpretation services

The Court shall arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and the Rules.

## Rule 43
## Procedure applicable to the publication of documents of the Court

The Court shall ensure that all documents subject to publication in accordance with the Statute and the Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

# Chapter 3
# Jurisdiction and admissibility

## Section I
## Declarations and referrals relating to articles 11, 12, 13 and 14

### Rule 44
### Declaration provided for in article 12, paragraph 3

1. The Registrar, at the request of the Prosecutor, may inquire of a State that is not a Party to the Statute or that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.

2. When a State lodges, or declares to the Registrar its intent to lodge, a declaration with the Registrar pursuant to article 12, paragraph 3, or when the Registrar acts pursuant to sub-rule 1, the Registrar shall inform the State concerned that the declaration under article 12, paragraph 3, has as a consequence the acceptance of jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation and the provisions of Part 9, and any rules thereunder concerning States Parties, shall apply.

### Rule 45
### Referral of a situation to the Prosecutor

A referral of a situation to the Prosecutor shall be in writing.

## Section II
## Initiation of investigations under article 15

### Rule 46
### Information provided to the Prosecutor under article 15, paragraphs 1 and 2

Where information is submitted under article 15, paragraph 1, or where oral or written testimony is received pursuant to article 15, paragraph 2, at the seat of the Court, the Prosecutor shall protect the confidentiality of such information and testimony or take any other necessary measures, pursuant to his or her duties under the Statute.

### Rule 47
### Testimony under article 15, paragraph 2

1. The provisions of rules 111 and 112 shall apply, *mutatis mutandis*, to testimony received by the Prosecutor pursuant to article 15, paragraph 2.

2. When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defence. If the testimony is subsequently presented in the proceedings, its admissibility shall be governed by article 69, paragraph 4, and given such weight as determined by the relevant Chamber.

### Rule 48
### Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

### Rule 49
### Decision and notice under article 15, paragraph 6

1. Where a decision under article 15, paragraph 6, is taken, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, paragraphs 1 and 2, or the integrity of investigations or proceedings.

2. The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

### Rule 50
### Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation

1. When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate.

2. A request for authorization by the Prosecutor shall be in writing.

3. Following information given in accordance with sub-rule 1, victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations.

4. The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing.

5. The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation in accordance with article 15, paragraph 4, with respect to all or any part of the request by the Prosecutor. The Chamber shall give notice of the decision to victims who have made representations.

6. The above procedure shall also apply to a new request to the Pre-Trial Chamber pursuant to article 15, paragraph 5.

## Section III
## Challenges and preliminary rulings under articles 17, 18 and 19

### Rule 51
### Information provided under article 17

In considering the matters referred to in article 17, paragraph 2, and in the context of the circumstances of the case, the Court may consider, *inter alia*, information that the State referred to in article 17, paragraph 1, may choose to bring to the attention of the Court showing that its courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct, or that the State has confirmed in writing to the Prosecutor that the case is being investigated or prosecuted.

### Rule 52
### Notification provided for in article 18, paragraph 1

1. Subject to the limitations provided for in article 18, paragraph 1, the notification shall contain information about the acts that may constitute crimes referred to in article 5, relevant for the purposes of article 18, paragraph 2.

2. A State may request additional information from the Prosecutor to assist it in the application of article 18, paragraph 2. Such a request shall not affect the one-month time limit provided for in article 18, paragraph 2, and shall be responded to by the Prosecutor on an expedited basis.

### Rule 53
### Deferral provided for in article 18, paragraph 2

When a State requests a deferral pursuant to article 18, paragraph 2, that State shall make this request in writing and provide information concerning its

investigation, taking into account article 18, paragraph 2. The Prosecutor may request additional information from that State.

### Rule 54
### Application by the Prosecutor under article 18, paragraph 2

1. An application submitted by the Prosecutor to the Pre-Trial Chamber in accordance with article 18, paragraph 2, shall be in writing and shall contain the basis for the application. The information provided by the State under rule 53 shall be communicated by the Prosecutor to the Pre-Trial Chamber.

2. The Prosecutor shall inform that State in writing when he or she makes an application to the Pre-Trial Chamber under article 18, paragraph 2, and shall include in the notice a summary of the basis of the application.

### Rule 55
### Proceedings concerning article 18, paragraph 2

1. The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.

2. The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation.

3. The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation.

### Rule 56
### Application by the Prosecutor following review under article 18, paragraph 3

1. Following a review by the Prosecutor as set forth in article 18, paragraph 3, the Prosecutor may apply to the Pre-Trial Chamber for authorization in accordance with article 18, paragraph 2. The application to the Pre-Trial Chamber shall be in writing and shall contain the basis for the application.

2. Any further information provided by the State under article 18, paragraph 5, shall be communicated by the Prosecutor to the Pre-Trial Chamber.

3. The proceedings shall be conducted in accordance with rules 54, sub-rule 2, and 55.

## Rule 57
## Provisional measures under article 18, paragraph 6

An application to the Pre-Trial Chamber by the Prosecutor in the circumstances provided for in article 18, paragraph 6, shall be considered ex parte and in camera. The Pre-Trial Chamber shall rule on the application on an expedited basis.

## Rule 58
## Proceedings under article 19

1. A request or application made under article 19 shall be in writing and contain the basis for it.

2. When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. It may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first.

3. The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.

4. The Court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility.

## Rule 59
## Participation in proceedings under article 19, paragraph 3

1. For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:

(a) Those who have referred a situation pursuant to article 13;

(b) The victims who have already communicated with the Court in relation to that case or their legal representatives.

2. The Registrar shall provide those referred to in sub-rule 1, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged.

3. Those receiving the information, as provided for in sub-rule 1, may make representation in writing to the competent Chamber within such time limit as it considers appropriate.

## Rule 60
## Competent organ to receive challenges

If a challenge to the jurisdiction of the Court or to the admissibility of a case is made after a confirmation of the charges but before the constitution or designation of the Trial Chamber, it shall be addressed to the Presidency, which shall refer it to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 130.

## Rule 61
## Provisional measures under article 19, paragraph 8

When the Prosecutor makes application to the competent Chamber in the circumstances provided for in article 19, paragraph 8, rule 57 shall apply.

## Rule 62
## Proceedings under article 19, paragraph 10

1. If the Prosecutor makes a request under article 19, paragraph 10, he or she shall make the request to the Chamber that made the latest ruling on admissibility. The provisions of rules 58, 59 and 61 shall be applicable.

2. The State or States whose challenge to admissibility under article 19, paragraph 2, provoked the decision of inadmissibility provided for in article 19, paragraph 10, shall be notified of the request of the Prosecutor and shall be given a time limit within which to make representations.

# Chapter 4
# Provisions relating to various stages of the proceedings

## Section 1
## Evidence

### Rule 63
### General provisions relating to evidence

1. The rules of evidence set forth in this chapter, together with article 69, shall apply in proceedings before all Chambers.

2. A Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.

3. A Chamber shall rule on an application of a party or on its own motion, made under article 64, subparagraph 9 (a), concerning admissibility when it is based on the grounds set out in article 69, paragraph 7.

4. Without prejudice to article 66, paragraph 3, a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.

5. The Chambers shall not apply national laws governing evidence, other than in accordance with article 21.

### Rule 64
### Procedure relating to the relevance or admissibility of evidence

1. An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.

2. A Chamber shall give reasons for any rulings it makes on evidentiary matters. These reasons shall be placed in the record of the proceedings if they have not already been incorporated into the record during the course of the proceedings in accordance with article 64, paragraph 10, and rule 137, sub-rule 1.

3. Evidence ruled irrelevant or inadmissible shall not be considered by the Chamber.

### Rule 65
### Compellability of witnesses

1. A witness who appears before the Court is compellable by the Court to provide testimony, unless otherwise provided for in the Statute and the Rules, in particular rules 73, 74 and 75.

2. Rule 171 applies to a witness appearing before the Court who is compellable to provide testimony under sub-rule 1.

### Rule 66
### Solemn undertaking

1. Except as described in sub-rule 2, every witness shall, in accordance with article 69, paragraph 1, make the following solemn undertaking before testifying:

> "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."

2. A person under the age of 18 or a person whose judgement has been impaired and who, in the opinion of the Chamber, does not understand the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Chamber considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.

3. Before testifying, the witness shall be informed of the offence defined in article 70, paragraph 1 (a).

### Rule 67
### Live testimony by means of audio or video-link technology

1. In accordance with article 69, paragraph 2, a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defence, and by the Chamber itself, at the time that the witness so testifies.

2. The examination of a witness under this rule shall be conducted in accordance with the relevant rules of this chapter.

3. The Chamber, with the assistance of the Registry, shall ensure that the venue chosen for the conduct of the audio or video-link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.

### Rule 68
### Prior recorded testimony

When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraph 2, allow the introduction of

previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

(a) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or

(b) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.

## Rule 69
## Agreements as to evidence

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

## Rule 70
## Principles of evidence in cases of sexual violence

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

## Rule 71
## Evidence of other sexual conduct

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.

## Rule 72
## In camera procedure to consider relevance or admissibility of evidence

1. Where there is an intention to introduce or elicit, including by means of the questioning of a victim or witness, evidence that the victim consented to an alleged crime of sexual violence, or evidence of the words, conduct, silence or lack of resistance of a victim or witness as referred to in principles (a) through (d) of rule 70, notification shall be provided to the Court which shall describe the substance of the evidence intended to be introduced or elicited and the relevance of the evidence to the issues in the case.

2. In deciding whether the evidence referred to in sub-rule 1 is relevant or admissible, a Chamber shall hear in camera the views of the Prosecutor, the defence, the witness and the victim or his or her legal representative, if any, and shall take into account whether that evidence has a sufficient degree of probative value to an issue in the case and the prejudice that such evidence may cause, in accordance with article 69, paragraph 4. For this purpose, the Chamber shall have regard to article 21, paragraph 3, and articles 67 and 68, and shall be guided by principles (a) to (d) of rule 70, especially with respect to the proposed questioning of a victim.

3. Where the Chamber determines that the evidence referred to in sub-rule 2 is admissible in the proceedings, the Chamber shall state on the record the specific purpose for which the evidence is admissible. In evaluating the evidence during the proceedings, the Chamber shall apply principles (a) to (d) of rule 70.

## Rule 73
## Privileged communications and information

1. Without prejudice to article 67, paragraph 1 (b), communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless:

(a) The person consents in writing to such disclosure; or

(b) The person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

2. Having regard to rule 63, sub-rule 5, communications made in the context of a class of professional or other confidential relationships shall be regarded as privileged, and consequently not subject to disclosure, under the same terms as in sub-rules 1 (a) and 1 (b) if a Chamber decides in respect of that class that:

(a) Communications occurring within that class of relationship are made in the course of a confidential relationship producing a reasonable expectation of privacy and non-disclosure;

(b) Confidentiality is essential to the nature and type of relationship between the person and the confidant; and

(c) Recognition of the privilege would further the objectives of the Statute and the Rules.

3. In making a decision under sub-rule 2, the Court shall give particular regard to recognizing as privileged those communications made in the context of the professional relationship between a person and his or her medical doctor, psychiatrist, psychologist or counsellor, in particular those related to or involving victims, or between a person and a member of a religious clergy; and in the latter case, the Court shall recognize as privileged those communications made in the context of a sacred confession where it is an integral part of the practice of that religion.

4. The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into the possession of in the course, or as a consequence, of the performance by ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement, unless:

(a) After consultations undertaken pursuant to sub-rule 6, ICRC does not object in writing to such disclosure, or otherwise has waived this privilege; or

(b) Such information, documents or other evidence is contained in public statements and documents of ICRC.

5. Nothing in sub-rule 4 shall affect the admissibility of the same evidence obtained from a source other than ICRC and its officials or employees when such evidence has also been acquired by this source independently of ICRC and its officials or employees.

6. If the Court determines that ICRC information, documents or other evidence are of great importance for a particular case, consultations shall be held between the Court and ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than ICRC, the interests of justice and of victims, and the performance of the Court's and ICRC's functions.

## Rule 74
## Self-incrimination by a witness

1. Unless a witness has been notified pursuant to rule 190, the Chamber shall notify a witness of the provisions of this rule before his or her testimony.

2. Where the Court determines that an assurance with respect to self-incrimination should be provided to a particular witness, it shall provide the assurances under sub-rule 3, paragraph (c), before the witness attends, directly or pursuant to a request under article 93, paragraph (1) (e).

3. (a) A witness may object to making any statement that might tend to incriminate him or her.

(b) Where the witness has attended after receiving an assurance under sub-rule 2, the Court may require the witness to answer the question or questions.

(c) In the case of other witnesses, the Chamber may require the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

(i) Will be kept confidential and will not be disclosed to the public or any State; and

(ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71.

4. Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, ex parte, to determine if the assurance should be given to this particular witness.

5. In determining whether to require the witness to answer, the Chamber shall consider:

(a) The importance of the anticipated evidence;

(b) Whether the witness would be providing unique evidence;

(c) The nature of the possible incrimination, if known; and

(d) The sufficiency of the protections for the witness, in the particular circumstances.

6. If the Chamber determines that it would not be appropriate to provide an assurance to this witness, it shall not require the witness to answer the question. If the Chamber determines not to require the witness to answer, it may still continue the questioning of the witness on other matters.

7. In order to give effect to the assurance, the Chamber shall:

(a) Order that the evidence of the witness be given in camera;

(b) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;

(c) Specifically advise the Prosecutor, the accused, the defence counsel, the legal representative of the victim and any Court staff present of the consequences of a breach of the order under subparagraph (b);

(d) Order the sealing of any record of the proceedings; and

(e) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.

8. Where the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall request an in camera hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in sub-rule 7 for all or a part of the testimony of that witness.

9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7.

10. If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an

opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule.

### Rule 75
### Incrimination by family members

1. A witness appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person. However, the witness may choose to make such a statement.

2. In evaluating the testimony of a witness, a Chamber may take into account that the witness, referred to in sub-rule 1, objected to reply to a question which was intended to contradict a previous statement made by the witness, or the witness was selective in choosing which questions to answer.

## Section II
## Disclosure

### Rule 76
### Pre-trial disclosure relating to prosecution witnesses

1. The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.

2. The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.

4. This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rules 81 and 82.

### Rule 77
### Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

## Rule 78
## Inspection of material in possession or control of the defence

The defence shall permit the Prosecutor to inspect any books, documents, photographs and other tangible objects in the possession or control of the defence, which are intended for use by the defence as evidence for the purposes of the confirmation hearing or at trial.

## Rule 79
## Disclosure by the defence

1. The defence shall notify the Prosecutor of its intent to:

(a) Raise the existence of an alibi, in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; or

(b) Raise a ground for excluding criminal responsibility provided for in article 31, paragraph 1, in which case the notification shall specify the names of witnesses and any other evidence upon which the accused intends to rely to establish the ground.

2. With due regard to time limits set forth in other rules, notification under sub-rule 1 shall be given sufficiently in advance to enable the Prosecutor to prepare adequately and to respond. The Chamber dealing with the matter may grant the Prosecutor an adjournment to address the issue raised by the defence.

3. Failure of the defence to provide notice under this rule shall not limit its right to raise matters dealt with in sub-rule 1 and to present evidence.

4. This rule does not prevent a Chamber from ordering disclosure of any other evidence.

## Rule 80
## Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3

1. The defence shall give notice to both the Trial Chamber and the Prosecutor if it intends to raise a ground for excluding criminal responsibility under article 31, paragraph 3. This shall be done sufficiently in advance of the commencement of the trial to enable the Prosecutor to prepare adequately for trial.

2. Following notice given under sub-rule 1, the Trial Chamber shall hear both the Prosecutor and the defence before deciding whether the defence can raise a ground for excluding criminal responsibility.

3. If the defence is permitted to raise the ground, the Trial Chamber may grant the Prosecutor an adjournment to address that ground.

## Rule 81
## Restrictions on disclosure

1. Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.

2. Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an ex parte basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

3. Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles. When the disclosure of such information may create a risk to the safety of the witness, the Court shall take measures to inform the witness in advance.

4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial.

5. Where material or information is in the possession or control of the Prosecutor which is withheld under article 68, paragraph 5, such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

6. Where material or information is in the possession or control of the defence which is subject to disclosure, it may be withheld in circumstances similar to those which would allow the Prosecutor to rely on article 68, paragraph 5, and a summary thereof submitted instead. Such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the Prosecutor.

## Rule 82
## Restrictions on disclosure of material and information protected under article 54, paragraph 3 (e)

1. Where material or information is in the possession or control of the Prosecutor which is protected under article 54, paragraph 3 (e), the Prosecutor may not subsequently introduce such material or information into evidence without the prior consent of the provider of the material or information and adequate prior disclosure to the accused.

2. If the Prosecutor introduces material or information protected under article 54, paragraph 3 (e), into evidence, a Chamber may not order the production of additional evidence received from the provider of the initial material or information, nor may a Chamber for the purpose of obtaining such additional evidence itself summon the provider or a representative of the provider as a witness or order their attendance.

3. If the Prosecutor calls a witness to introduce in evidence any material or information which has been protected under article 54, paragraph 3 (e), a Chamber may not compel that witness to answer any question relating to the material or information or its origin, if the witness declines to answer on grounds of confidentiality.

4. The right of the accused to challenge evidence which has been protected under article 54, paragraph 3 (e), shall remain unaffected subject only to the limitations contained in sub-rules 2 and 3.

5. A Chamber dealing with the matter may order, upon application by the defence, that, in the interests of justice, material or information in the possession of the accused, which has been provided to the accused under the same conditions as set forth in article 54, paragraph 3 (e), and which is to be introduced into evidence, shall be subject *mutatis mutandis* to sub-rules 1, 2 and 3.

## Rule 83
## Ruling on exculpatory evidence under article 67, paragraph 2

The Prosecutor may request as soon as practicable a hearing on an ex parte basis before the Chamber dealing with the matter for the purpose of obtaining a ruling under article 67, paragraph 2.

## Rule 84
## Disclosure and additional evidence for trial

In order to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber shall, in accordance with article 64, paragraphs 3 (c) and 6 (d), and article 67, paragraph (2), and subject to article 68, paragraph 5, make any necessary orders for the disclosure of documents or information not previously disclosed and for the production of additional evidence. To avoid delay and to ensure that the trial commences on the set date, any such orders shall include strict time limits which shall be kept under review by the Trial Chamber.

# Section III
# Victims and witnesses

## Subsection 1
## Definition and general principle relating to victims

### Rule 85
### Definition of victims

For the purposes of the Statute and the Rules of Procedure and Evidence:

(a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

### Rule 86
### General principle

A Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.

## Subsection 2
## Protection of victims and witnesses

### Rule 87
### Protective measures

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

2. A motion or request under sub-rule 1 shall be governed by rule 134, provided that:

(a) Such a motion or request shall not be submitted ex parte;

(b) A request by a witness or by a victim or his or her legal representative, if any, shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;

(c) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, if any, in addition to the other party, each of whom shall have the opportunity to respond;

(d) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any witness or any victim or his or her legal representative, if any, who would be affected by such protective measure; and

(e) A motion or request may be filed under seal, and, if so filed, shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.

3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted in camera, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:

(a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;

(b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

(c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;

(d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or

(e) That a Chamber conduct part of its proceedings in camera.

## Rule 88
## Special measures

1. Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the special measure is sought prior to ordering that measure.

2. A Chamber may hold a hearing on a motion or a request under sub-rule 1, if necessary in camera or ex parte, to determine whether to order any such special

measure, including but not limited to an order that a counsel, a legal representative, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness.

3. For *inter partes* motions or requests filed under this rule, the provisions of rule 87, sub-rules 2 (b) to (d), shall apply *mutatis mutandis*.

4. A motion or request filed under this rule may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Any responses to *inter partes* motions or requests filed under seal shall also be filed under seal.

5. Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

## Subsection 3
## Participation of victims in the proceedings

### Rule 89
### Application for participation of victims in the proceedings

1. In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a time limit to be set by the Chamber. Subject to the provisions of sub-rule 2, the Chamber shall then specify the proceedings and manner in which participation is considered appropriate, which may include making opening and closing statements.

2. The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose application has been rejected may file a new application later in the proceedings.

3. An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

4. Where there are a number of applications, the Chamber may consider the applications in such a manner as to ensure the effectiveness of the proceedings and may issue one decision.

### Rule 90
### Legal representatives of victims

1. A victim shall be free to choose a legal representative.

2. Where there are a number of victims, the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of counsel, maintained by the Registry, or suggesting one or more common legal representatives.

3. If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.

4. The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.

5. A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.

6. A legal representative of a victim or victims shall have the qualifications set forth in rule 22, sub-rule 1.

## Rule 91
## Participation of legal representatives in the proceedings

1. A Chamber may modify a previous ruling under rule 89.

2. A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof given under rules 89 and 90. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations or submissions. The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.

3. (a) When a legal representative attends and participates in accordance with this rule, and wishes to question a witness, including questioning under rules 67 and 68, an expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a time limit set by the Chamber.

(b) The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber under article 64. The Chamber may, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative.

4. For a hearing limited to reparations under article 75, the restrictions on questioning by the legal representative set forth in sub-rule 2 shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned.

## Rule 92
## Notification to victims and their legal representatives

1. This rule on notification to victims and their legal representatives shall apply to all proceedings before the Court, except in proceedings provided for in Part 2.

2. In order to allow victims to apply for participation in the proceedings in accordance with rule 89, the Court shall notify victims concerning the decision of the Prosecutor not to initiate an investigation or not to prosecute pursuant to article 53. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the situation or case in question. The Chamber may order the measures outlined in sub-rule 8 if it considers it appropriate in the particular circumstances.

3. In order to allow victims to apply for participation in the proceedings in accordance with rule 89, the Court shall notify victims regarding its decision to hold a hearing to confirm charges pursuant to article 61. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the case in question.

4. When a notification for participation as provided for in sub-rules 2 and 3 has been given, any subsequent notification as referred to in sub-rules 5 and 6 shall only be provided to victims or their legal representatives who may participate in the proceedings in accordance with a ruling of the Chamber pursuant to rule 89 and any modification thereof.

5. In a manner consistent with the ruling made under rules 89 to 91, victims or their legal representatives participating in proceedings shall, in respect of those proceedings, be notified by the Registrar in a timely manner of:

(a) Proceedings before the Court, including the date of hearings and any postponements thereof, and the date of delivery of the decision;

(b) Requests, submissions, motions and other documents relating to such requests, submissions or motions.

6. Where victims or their legal representatives have participated in a certain stage of the proceedings, the Registrar shall notify them as soon as possible of the decisions of the Court in those proceedings.

7. Notifications as referred to in sub-rules 5 and 6 shall be in writing or, where written notification is not possible, in any other form as appropriate. The Registry shall keep a record of all notifications. Where necessary, the Registrar may seek the cooperation of States Parties in accordance with article 93, paragraph 1 (d) and (l).

8. For notification as referred to in sub-rule 3 and otherwise at the request of a Chamber, the Registrar shall take necessary measures to give adequate publicity to

the proceedings. In doing so, the Registrar may seek, in accordance with Part 9, the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations.

### Rule 93
### Views of victims or their legal representatives

A Chamber may seek the views of victims or their legal representatives participating pursuant to rules 89 to 91 on any issue, *inter alia*, in relation to issues referred to in rules 107, 109, 125, 128, 136, 139 and 191. In addition, a Chamber may seek the views of other victims, as appropriate.

## Subsection 4
## Reparations to victims

### Rule 94
### Procedure upon request

1. A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:

(a) The identity and address of the claimant;

(b) A description of the injury, loss or harm;

(c) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;

(d) Where restitution of assets, property or other tangible items is sought, a description of them;

(e) Claims for compensation;

(f) Claims for rehabilitation and other forms of remedy;

(g) To the extent possible, any relevant supporting documentation, including names and addresses of witnesses.

2. At commencement of the trial and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

### Rule 95
### Procedure on the motion of the Court

1. In cases where the Court intends to proceed on its own motion pursuant to article 75, paragraph 1, it shall ask the Registrar to provide notification of its intention to the person or persons against whom the Court is considering making a determination, and, to the extent possible, to victims, interested persons and

interested States. Those notified shall file with the Registry any representation made under article 75, paragraph 3.

2. If, as a result of notification under sub-rule 1:

(a) A victim makes a request for reparations, that request will be determined as if it had been brought under rule 94;

(b) A victim requests that the Court does not make an order for reparations, the Court shall not proceed to make an individual order in respect of that victim.

## Rule 96
## Publication of reparation proceedings

1. Without prejudice to any other rules on notification of proceedings, the Registrar shall, insofar as practicable, notify the victims or their legal representatives and the person or persons concerned. The Registrar shall also, having regard to any information provided by the Prosecutor, take all the necessary measures to give adequate publicity of the reparation proceedings before the Court, to the extent possible, to other victims, interested persons and interested States.

2. In taking the measures described in sub-rule 1, the Court may seek, in accordance with Part 9, the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations in order to give publicity, as widely as possible and by all possible means, to the reparation proceedings before the Court.

## Rule 97
## Assessment of reparations

1. Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both.

2. At the request of victims or their legal representatives, or at the request of the convicted person, or on its own motion, the Court may appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.

3. In all cases, the Court shall respect the rights of victims and the convicted person.

## Rule 98
## Trust Fund

1. Individual awards for reparations shall be made directly against a convicted person.

2. The Court may order that an award for reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is

impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.

3. The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate.

4. Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.

5. Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79.

### Rule 99
### Cooperation and protective measures for the purpose of forfeiture under articles 57, paragraph 3 (e), and 75, paragraph 4

1. The Pre-Trial Chamber, pursuant to article 57, paragraph 3 (e), or the Trial Chamber, pursuant to article 75, paragraph 4, may, on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine whether measures should be requested.

2. Notice is not required unless the Court determines, in the particular circumstances of the case, that notification could not jeopardize the effectiveness of the measures requested. In the latter case, the Registrar shall provide notification of the proceedings to the person against whom a request is made and so far as is possible to any interested persons or interested States.

3. If an order is made without prior notification, the relevant Chamber shall request the Registrar, as soon as is consistent with the effectiveness of the measures requested, to notify those against whom a request is made and, to the extent possible, to any interested persons or any interested States and invite them to make observations as to whether the order should be revoked or otherwise modified.

4. The Court may make orders as to the timing and conduct of any proceedings necessary to determine these issues.

## Section IV
## Miscellaneous provisions

### Rule 100
### Place of the proceedings

1. In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State.

2. An application or recommendation changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecutor, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing and specify in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.

3. The Presidency shall consult the State where the Court intends to sit. If that State agrees that the Court can sit in that State, then the decision to sit in a State other than the host State shall be taken by the judges, in plenary session, by a two-thirds majority.

## Rule 101
## Time limits

1. In making any order setting time limits regarding the conduct of any proceedings, the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims.

2. Taking into account the rights of the accused, in particular under article 67, paragraph (1) (c), all those participating in the proceedings to whom any order is directed shall endeavour to act as expeditiously as possible, within the time limit ordered by the Court.

## Rule 102
## Communications other than in writing

Where a person is unable, due to a disability or illiteracy, to make a written request, application, observation or other communication to the Court, the person may make such request, application, observation or communication in audio, video or other electronic form.

## Rule 103
## Amicus curiae and other forms of submission

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.

# Chapter 5
# Investigation and prosecution

## Section I
## Decision of the Prosecutor regarding the initiation of an investigation under article 53, paragraphs 1 and 2

### Rule 104
### Evaluation of information by the Prosecutor

1. In acting pursuant to article 53, paragraph 1, the Prosecutor shall, in evaluating the information made available to him or her, analyse the seriousness of the information received.

2. For the purposes of sub-rule 1, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. The procedure set out in rule 47 shall apply to the receiving of such testimony.

### Rule 105
### Notification of a decision by the Prosecutor not to initiate an investigation

1. When the Prosecutor decides not to initiate an investigation under article 53, paragraph 1, he or she shall promptly inform in writing the State or States that referred a situation under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

2. When the Prosecutor decides not to submit to the Pre-Trial Chamber a request for authorization of an investigation, rule 49 shall apply.

3. The notification referred to in sub-rule 1 shall contain the conclusion of the Prosecutor and, having regard to article 68, paragraph 1, the reasons for the conclusion.

4. In case the Prosecutor decides not to investigate solely on the basis of article 53, paragraph 1 (c), he or she shall inform in writing the Pre-Trial Chamber promptly after making that decision.

5. The notification shall contain the conclusion of the Prosecutor and the reasons for the conclusion.

### Rule 106
### Notification of a decision by the Prosecutor not to prosecute

1. When the Prosecutor decides that there is not a sufficient basis for prosecution under article 53, paragraph 2, he or she shall promptly inform in writing the Pre-Trial Chamber, together with the State or States that referred a situation under article

14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

2. The notifications referred to in sub-rule 1 shall contain the conclusion of the Prosecutor and, having regard to article 68, paragraph 1, the reasons for the conclusion.

## Section II
## Procedure under article 53, paragraph 3

### Rule 107
### Request for review under article 53, paragraph 3 (a)

1. A request under article 53, paragraph 3, for a review of a decision by the Prosecutor not to initiate an investigation or not to prosecute shall be made in writing, and be supported with reasons, within 90 days following the notification given under rule 105 or 106.

2. The Pre-Trial Chamber may request the Prosecutor to transmit the information or documents in his or her possession, or summaries thereof, that the Chamber considers necessary for the conduct of the review.

3. The Pre-Trial Chamber shall take such measures as are necessary under articles 54, 72 and 93 to protect the information and documents referred to in sub-rule 2 and, under article 68, paragraph 5, to protect the safety of witnesses and victims and members of their families.

4. When a State or the Security Council makes a request referred to in sub-rule 1, the Pre-Trial Chamber may seek further observations from them.

5. Where an issue of jurisdiction or admissibility of the case is raised, rule 59 shall apply.

### Rule 108
### Decision of the Pre-Trial Chamber under article 53, paragraph 3 (a)

1. A decision of the Pre-Trial Chamber under article 53, paragraph 3 (a), must be concurred in by a majority of its judges and shall contain reasons. It shall be communicated to all those who participated in the review.

2. Where the Pre-Trial Chamber requests the Prosecutor to review, in whole or in part, his or her decision not to initiate an investigation or not to prosecute, the Prosecutor shall reconsider that decision as soon as possible.

3. Once the Prosecutor has taken a final decision, he or she shall notify the Pre-Trial Chamber in writing. This notification shall contain the conclusion of the Prosecutor and the reasons for the conclusion. It shall be communicated to all those who participated in the review.

### Rule 109
### Review by the Pre-Trial Chamber under article 53, paragraph 3 (b)

1. Within 180 days following a notification given under rule 105 or 106, the Pre-Trial Chamber may on its own initiative decide to review a decision of the Prosecutor taken solely under article 53, paragraph 1 (c) or 2 (c). The Pre-Trial Chamber shall inform the Prosecutor of its intention to review his or her decision and shall establish a time limit within which the Prosecutor may submit observations and other material.

2. In cases where a request has been submitted to the Pre-Trial Chamber by a State or by the Security Council, they shall also be informed and may submit observations in accordance with rule 107.

### Rule 110
### Decision by the Pre-Trial Chamber under article 53, paragraph 3 (b)

1. A decision by the Pre-Trial Chamber to confirm or not to confirm a decision taken by the Prosecutor solely under article 53, paragraph 1 (c) or 2 (c), must be concurred in by a majority of its judges and shall contain reasons. It shall be communicated to all those who participated in the review.

2. When the Pre-Trial Chamber does not confirm the decision by the Prosecutor referred to in sub-rule 1, he or she shall proceed with the investigation or prosecution.

## Section III
## Collection of evidence

### Rule 111
### Record of questioning in general

1. A record shall be made of formal statements made by any person who is questioned in connection with an investigation or with proceedings. The record shall be signed by the person who records and conducts the questioning and by the person who is questioned and his or her counsel, if present, and, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during the questioning. It shall also be noted when someone has not signed the record as well as the reasons therefor.

2. When the Prosecutor or national authorities question a person, due regard shall be given to article 55. When a person is informed of his or her rights under article 55, paragraph 2, the fact that this information has been provided shall be noted in the record.

## Rule 112
## Recording of questioning in particular cases

1. Whenever the Prosecutor questions a person to whom article 55, paragraph 2, applies, or for whom a warrant of arrest or a summons to appear has been issued under article 58, paragraph 7, the questioning shall be audio- or video-recorded, in accordance with the following procedure:

(a) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio- or video-recorded, and that the person concerned may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be audio- or video-recorded, the procedure in rule 111 shall be followed;

(b) A waiver of the right to be questioned in the presence of counsel shall be recorded in writing and, if possible, be audio- or video-recorded;

(c) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio- or video-recording ends as well as the time of resumption of the questioning;

(d) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;

(e) The tape shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(f) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the Prosecutor and the person questioned and the counsel, if present.

2. The Prosecutor shall make every reasonable effort to record the questioning in accordance with sub-rule 1. As an exception, a person may be questioned without the questioning being audio- or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the procedure in rule 111 shall be followed.

3. When, pursuant to sub-rule 1 (a) or 2, the questioning is not audio- or video-recorded, the person questioned shall be provided with a copy of his or her statement.

4. The Prosecutor may choose to follow the procedure in this rule when questioning other persons than those mentioned in sub-rule 1, in particular where the use of such procedures could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence. The Prosecutor may make an application to the relevant Chamber.

5. The Pre-Trial Chamber may, in pursuance of article 56, paragraph 2, order that the procedure in this rule be applied to the questioning of any person.

### Rule 113
### Collection of information regarding the state of health of the person concerned

1. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor, the person concerned or his or her counsel, order that a person having the rights in article 55, paragraph 2, be given a medical, psychological or psychiatric examination. In making its determination, the Pre-Trial Chamber shall consider the nature and purpose of the examination and whether the person consents to the examination.

2. The Pre-Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Pre-Trial Chamber at the request of a party.

### Rule 114
### Unique investigative opportunity under article 56

1. Upon being advised by the Prosecutor in accordance with article 56, paragraph 1 (a), the Pre-Trial Chamber shall hold consultations without delay with the Prosecutor and, subject to the provisions of article 56, paragraph 1 (c), with the person who has been arrested or who has appeared before the Court pursuant to summons and his or her counsel, in order to determine the measures to be taken and the modalities of their implementation, which may include measures to ensure that the right to communicate under article 67, paragraph 1 (b), is protected.

2. A decision of the Pre-Trial Chamber to take measures pursuant to article 56, paragraph 3, must be concurred in by a majority of its judges after consultations with the Prosecutor. During the consultations, the Prosecutor may advise the Pre-Trial Chamber that intended measures could jeopardize the proper conduct of the investigation.

### Rule 115
### Collection of evidence in the territory of a State Party under article 57, paragraph 3 (d)

1. Where the Prosecutor considers that article 57, paragraph 3 (d), applies, the Prosecutor may submit a written request to the Pre-Trial Chamber for authorization to take certain measures in the territory of the State Party in question. After a submission of such a request, the Pre-Trial Chamber shall, whenever possible, inform and invite views from the State Party concerned.

2. In arriving at its determination as to whether the request is well founded, the Pre-Trial Chamber shall take into account any views expressed by the State Party concerned. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor or the State Party concerned, decide to hold a hearing.

3. An authorization under article 57, paragraph 3 (d), shall be issued in the form of an order and shall state the reasons, based on the criteria set forth in that

paragraph. The order may specify procedures to be followed in carrying out such collection of evidence.

### Rule 116
### Collection of evidence at the request of the defence under article 57, paragraph 3 (b)

1. The Pre-Trial Chamber shall issue an order or seek cooperation under article 57, paragraph 3 (b), where it is satisfied:

(a) That such an order would facilitate the collection of evidence that may be material to the proper determination of the issues being adjudicated, or to the proper preparation of the person's defence; and

(b) In a case of cooperation under Part 9, that sufficient information to comply with article 96, paragraph 2, has been provided.

2. Before taking a decision whether to issue an order or seek cooperation under article 57, paragraph 3 (b), the Pre-Trial Chamber may seek the views of the Prosecutor.

## Section IV
## Procedures in respect of restriction and deprivation of liberty

### Rule 117
### Detention in the custodial State

1. The Court shall take measures to ensure that it is informed of the arrest of a person in response to a request made by the Court under article 89 or 92. Once so informed, the Court shall ensure that the person receives a copy of the arrest warrant issued by the Pre-Trial Chamber under article 58 and any relevant provisions of the Statute. The documents shall be made available in a language that the person fully understands and speaks.

2. At any time after arrest, the person may make a request to the Pre-Trial Chamber for the appointment of counsel to assist with proceedings before the Court and the Pre-Trial Chamber shall take a decision on such request.

3. A challenge as to whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b), shall be made in writing to the Pre-Trial Chamber. The application shall set out the basis for the challenge. After having obtained the views of the Prosecutor, the Pre-Trial Chamber shall decide on the application without delay.

4. When the competent authority of the custodial State notifies the Pre-Trial Chamber that a request for release has been made by the person arrested, in accordance with article 59, paragraph 5, the Pre-Trial Chamber shall provide its recommendations within any time limit set by the custodial State.

5. When the Pre-Trial Chamber is informed that the person has been granted interim release by the competent authority of the custodial State, the Pre-Trial Chamber shall inform the custodial State how and when it would like to receive periodic reports on the status of the interim release.

## Rule 118
## Pre-trial detention at the seat of the Court

1. If the person surrendered to the Court makes an initial request for interim release pending trial, either upon first appearance in accordance with rule 121 or subsequently, the Pre-Trial Chamber shall decide upon the request without delay, after seeking the views of the Prosecutor.

2. The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.

3. After the first appearance, a request for interim release must be made in writing. The Prosecutor shall be given notice of such a request. The Pre-Trial Chamber shall decide after having received observations in writing of the Prosecutor and the detained person. The Pre-Trial Chamber may decide to hold a hearing, at the request of the Prosecutor or the detained person or on its own initiative. A hearing must be held at least once every year.

## Rule 119
## Conditional release

1. The Pre-Trial Chamber may set one or more conditions restricting liberty, including the following:

(a) The person must not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;

(b) The person must not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;

(c) The person must not contact directly or indirectly victims or witnesses;

(d) The person must not engage in certain professional activities;

(e) The person must reside at a particular address as specified by the Pre-Trial Chamber;

(f) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;

(g) The person must post bond or provide real or personal security or surety, for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;

(h) The person must supply the Registrar with all identity documents, particularly his or her passport.

2. At the request of the person concerned or the Prosecutor or on its own initiative, the Pre-Trial Chamber may at any time decide to amend the conditions set pursuant to sub-rule 1.

3. Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed.

4. If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis, at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.

5. When the Pre-Trial Chamber issues a summons to appear pursuant to article 58, paragraph 7, and intends to set conditions restricting liberty, it shall ascertain the relevant provisions of the national law of the State receiving the summons. In a manner that is in keeping with the national law of the State receiving the summons, the Pre-Trial Chamber shall proceed in accordance with sub-rules 1, 2 and 3. If the Pre-Trial Chamber receives information that the person concerned has failed to comply with conditions imposed, it shall proceed in accordance with sub-rule 4.

### Rule 120
### Instruments of restraint

Personal instruments of restraint shall not be used except as a precaution against escape, for the protection of the person in the custody of the Court and others or for other security reasons, and shall be removed when the person appears before a Chamber.

## Section V
## Proceedings with regard to the confirmation of charges under article 61

### Rule 121
### Proceedings before the confirmation hearing

1. A person subject to a warrant of arrest or a summons to appear under article 58 shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67. At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges. It shall ensure that this date, and any postponements under sub-rule 7, are made public.

2. In accordance with article 61, paragraph 3, the Pre-Trial Chamber shall take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued. During disclosure:

(a) The person concerned may be assisted or represented by the counsel of his or her choice or by a counsel assigned to him or her;

(b) The Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a judge of the Pre-Trial Chamber shall be appointed to organize such status conferences, on his or her own motion, or at the request of the Prosecutor or the person;

(c) All evidence disclosed between the Prosecutor and the person for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.

3. The Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

4. Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing of the amended charges together with a list of evidence that the Prosecutor intends to bring in support of those charges at the hearing.

5. Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence no later than 15 days before the date of the hearing.

6. If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.

7. The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.

8. The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.

9. The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.

10. The Registry shall create and maintain a full and accurate record of all proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the person and victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

## Rule 122
## Proceedings at the confirmation hearing in the presence of the person charged

1. The Presiding Judge of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The Presiding Judge shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions under which he or she intends the evidence contained in the record of the proceedings to be presented.

2. If a question or challenge concerning jurisdiction or admissibility arises, rule 58 applies.

3. Before hearing the matter on the merits, the Presiding Judge of the Pre-Trial Chamber shall ask the Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing.

4. At no subsequent point may the objections and observations made under sub-rule 3 be raised or made again in the confirmation or trial proceedings.

5. If objections or observations referred to in sub-rule 3 are presented, the Presiding Judge of the Pre-Trial Chamber shall invite those referred to in sub-rule 3 to present their arguments, in the order which he or she shall establish. The person shall have the right to reply.

6. If the objections raised or observations made are those referred to in sub-rule 3, the Pre-Trial Chamber shall decide whether to join the issue raised with the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.

7. During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with article 61, paragraphs 5 and 6.

8. The Pre-Trial Chamber shall permit the Prosecutor and the person, in that order, to make final observations.

9. Subject to the provisions of article 61, article 69 shall apply *mutatis mutandis* at the confirmation hearing.

## Rule 123
## Measures to ensure the presence of the person concerned at the confirmation hearing

1. When a warrant of arrest or summons to appear in accordance with article 58, paragraph 7, has been issued for a person by the Pre-Trial Chamber and the person is arrested or served with the summons, the Pre-Trial Chamber shall ensure that the person is notified of the provisions of article 61, paragraph 2.

2. The Pre-Trial Chamber may hold consultations with the Prosecutor, at the request of the latter or on its own initiative, in order to determine whether there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2 (b). When the person concerned has a counsel known to the

Court, the consultations shall be held in the presence of the counsel unless the Pre-Trial Chamber decides otherwise.

3. The Pre-Trial Chamber shall ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

## Rule 124
## Waiver of the right to be present at the confirmation hearing

1. If the person concerned is available to the Court but wishes to waive the right to be present at the hearing on confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber, which may then hold consultations with the Prosecutor and the person concerned, assisted or represented by his or her counsel.

2. A confirmation hearing pursuant to article 61, paragraph 2 (a), shall only be held when the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving this right.

3. The Pre-Trial Chamber may authorize and make provision for the person to observe the hearing from outside the courtroom through the use of communications technology, if required.

4. The waiving of the right to be present at the hearing does not prevent the Pre-Trial Chamber from receiving written observations on issues before the Chamber from the person concerned.

## Rule 125
## Decision to hold the confirmation hearing in the absence of the person concerned

1. After holding consultations under rules 123 and 124, the Pre-Trial Chamber shall decide whether there is cause to hold a hearing on confirmation of charges in the absence of the person concerned, and in that case, whether the person may be represented by counsel. The Pre-Trial Chamber shall, when appropriate, set a date for the hearing and make the date public.

2. The decision of the Pre-Trial Chamber shall be notified to the Prosecutor and, if possible, to the person concerned or his or her counsel.

3. If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is not available to the Court, the confirmation of charges may not take place until the person is available to the Court. The Pre-Trial Chamber may review its decision at any time, at the request of the Prosecutor or on its own initiative.

4. If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is available to the Court, it shall order the person to appear.

### Rule 126
### Confirmation hearing in the absence of the person concerned

1. The provisions of rules 121 and 122 shall apply *mutatis mutandis* to the preparation for and holding of a hearing on confirmation of charges in the absence of the person concerned.

2. If the Pre-Trial Chamber has determined that the person concerned shall be represented by counsel, the counsel shall have the opportunity to exercise the rights of that person.

3. When the person who has fled is subsequently arrested and the Court has confirmed the charges upon which the Prosecutor intends to pursue the trial, the person charged shall be committed to the Trial Chamber established under article 61, paragraph 11. The person charged may request in writing that the Trial Chamber refer issues to the Pre-Trial Chamber that are necessary for the Chamber's effective and fair functioning in accordance with article 64, paragraph 4.

## Section VI
## Closure of the pre-trial phase

### Rule 127
### Procedure in the event of different decisions on multiple charges

If the Pre-Trial Chamber is ready to confirm some of the charges but adjourns the hearing on other charges under article 61, paragraph 7 (c), it may decide that the committal of the person concerned to the Trial Chamber on the charges that it is ready to confirm shall be deferred pending the continuation of the hearing. The Pre-Trial Chamber may then establish a time limit within which the Prosecutor may proceed in accordance with article 61, paragraph 7 (c) (i) or (ii).

### Rule 128
### Amendment of the charges

1. If the Prosecutor seeks to amend charges already confirmed before the trial has begun, in accordance with article 61, the Prosecutor shall make a written request to the Pre-Trial Chamber, and that Chamber shall so notify the accused.

2. Before deciding whether to authorize the amendment, the Pre-Trial Chamber may request the accused and the Prosecutor to submit written observations on certain issues of fact or law.

3. If the Pre-Trial Chamber determines that the amendments proposed by the Prosecutor constitute additional or more serious charges, it shall proceed, as appropriate, in accordance with rules 121 and 122 or rules 123 to 126.

## Rule 129
## Notification of the decision on the confirmation of charges

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the Prosecutor, the person concerned and his or her counsel. Such decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency.

## Rule 130
## Constitution of the Trial Chamber

When the Presidency constitutes a Trial Chamber and refers the case to it, the Presidency shall transmit the decision of the Pre-Trial Chamber and the record of the proceedings to the Trial Chamber. The Presidency may also refer the case to a previously constituted Trial Chamber.

# Chapter 6
# Trial procedure

## Rule 131
## Record of the proceedings transmitted by the Pre-Trial Chamber

1. The Registrar shall maintain the record of the proceedings transmitted by the Pre-Trial Chamber, pursuant to rule 121, sub-rule 10.

2. Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the defence, the representatives of States when they participate in the proceedings, and the victims or their legal representatives participating in the proceedings pursuant to rules 89 to 91.

## Rule 132
## Status conferences

1. Promptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial. The Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may postpone the date of the trial. The Trial Chamber shall notify the trial date to all those participating in the proceedings. The Trial Chamber shall ensure that this date and any postponements are made public.

2. In order to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber may confer with the parties by holding status conferences as necessary.

## Rule 133
## Motions challenging admissibility or jurisdiction

Challenges to the jurisdiction of the Court or the admissibility of the case at the commencement of the trial, or subsequently with the leave of the Court, shall be dealt with by the Presiding Judge and the Trial Chamber in accordance with rule 58.

## Rule 134
## Motions relating to the trial proceedings

1. Prior to the commencement of the trial, the Trial Chamber on its own motion, or at the request of the Prosecutor or the defence, may rule on any issue concerning the conduct of the proceedings. Any request from the Prosecutor or the defence shall be in writing and, unless the request is for an ex parte procedure, served on the other party. For all requests other than those submitted for an ex parte procedure, the other party shall have the opportunity to file a response.

2. At the commencement of the trial, the Trial Chamber shall ask the Prosecutor and the defence whether they have any objections or observations concerning the conduct of the proceedings which have arisen since the confirmation hearings. Such

objections or observations may not be raised or made again on a subsequent occasion in the trial proceedings, without leave of the Trial Chamber in this proceeding.

3. After the commencement of the trial, the Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may rule on issues that arise during the course of the trial.

## Rule 135
## Medical examination of the accused

1. The Trial Chamber may, for the purpose of discharging its obligations under article 64, paragraph 8 (a), or for any other reasons, or at the request of a party, order a medical, psychiatric or psychological examination of the accused, under the conditions set forth in rule 113.

2. The Trial Chamber shall place its reasons for any such order on the record.

3. The Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Trial Chamber at the request of a party.

4. Where the Trial Chamber is satisfied that the accused is unfit to stand trial, it shall order that the trial be adjourned. The Trial Chamber may, on its own motion or at the request of the prosecution or the defence, review the case of the accused. In any event, the case shall be reviewed every 120 days unless there are reasons to do otherwise. If necessary, the Trial Chamber may order further examinations of the accused. When the Trial Chamber is satisfied that the accused has become fit to stand trial, it shall proceed in accordance with rule 132.

## Rule 136
## Joint and separate trials

1. Persons accused jointly shall be tried together unless the Trial Chamber, on its own motion or at the request of the Prosecutor or the defence, orders that separate trials are necessary, in order to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt and can be proceeded against in accordance with article 65, paragraph 2.

2. In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.

## Rule 137
## Record of the trial proceedings

1. In accordance with article 64, paragraph 10, the Registrar shall take measures to make, and preserve, a full and accurate record of all proceedings, including transcripts, audio- and video-recordings and other means of capturing sound or image.

2. A Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.

3. The Trial Chamber may authorize persons other than the Registrar to take photographs, audio- and video-recordings and other means of capturing the sound or image of the trial.

## Rule 138
## Custody of evidence

The Registrar shall retain and preserve, as necessary, all the evidence and other materials offered during the hearing, subject to any order of the Trial Chamber.

## Rule 139
## Decision on admission of guilt

1. After having proceeded in accordance with article 65, paragraph 1, the Trial Chamber, in order to decide whether to proceed in accordance with article 65, paragraph 4, may invite the views of the Prosecutor and the defence.

2. The Trial Chamber shall then make its decision on the admission of guilt and shall give reasons for this decision, which shall be placed on the record.

## Rule 140
## Directions for the conduct of the proceedings and testimony

1. If the Presiding Judge does not give directions under article 64, paragraph 8, the Prosecutor and the defence shall agree on the order and manner in which the evidence shall be submitted to the Trial Chamber. If no agreement can be reached, the Presiding Judge shall issue directions.

2. In all cases, subject to article 64, paragraphs 8 (b) and 9, article 69, paragraph 4, and rule 88, sub-rule 5, a witness may be questioned as follows:

(a) A party that submits evidence in accordance with article 69, paragraph 3, by way of a witness, has the right to question that witness;

(b) The prosecution and the defence have the right to question that witness about relevant matters related to the witness's testimony and its reliability, the credibility of the witness and other relevant matters;

(c) The Trial Chamber has the right to question a witness before or after a witness is questioned by a participant referred to in sub-rules 2 (a) or (b);

(d) The defence shall have the right to be the last to examine a witness.

3. Unless otherwise ordered by the Trial Chamber, a witness other than an expert, or an investigator if he or she has not yet testified, shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying. When a witness testifies after hearing the testimony of others, this fact

shall be noted in the record and considered by the Trial Chamber when evaluating the evidence.

### Rule 141
### Closure of evidence and closing statements

1. The Presiding Judge shall declare when the submission of evidence is closed.

2. The Presiding Judge shall invite the Prosecutor and the defence to make their closing statements. The defence shall always have the opportunity to speak last.

### Rule 142
### Deliberations

1. After the closing statements, the Trial Chamber shall retire to deliberate, in camera. The Trial Chamber shall inform all those who participated in the proceedings of the date on which the Trial Chamber will pronounce its decision. The pronouncement shall be made within a reasonable period of time after the Trial Chamber has retired to deliberate.

2. When there is more than one charge, the Trial Chamber shall decide separately on each charge. When there is more than one accused, the Trial Chamber shall decide separately on the charges against each accused.

### Rule 143
### Additional hearings on matters related to sentence or reparations

Pursuant to article 76, paragraphs 2 and 3, for the purpose of holding a further hearing on matters related to sentence and, if applicable, reparations, the Presiding Judge shall set the date of the further hearing. This hearing can be postponed, in exceptional circumstances, by the Trial Chamber, on its own motion or at the request of the Prosecutor, the defence or the legal representatives of the victims participating in the proceedings pursuant to rules 89 to 91 and, in respect of reparations hearings, those victims who have made a request under rule 94.

### Rule 144
### Delivery of the decisions of the Trial Chamber

1. Decisions of the Trial Chamber concerning admissibility of a case, the jurisdiction of the Court, criminal responsibility of the accused, sentence and reparations shall be pronounced in public and, wherever possible, in the presence of the accused, the Prosecutor, the victims or the legal representatives of the victims participating in the proceedings pursuant to rules 89 to 91, and the representatives of the States which have participated in the proceedings.

2. Copies of all the above-mentioned decisions shall be provided as soon as possible to:

(a) All those who participated in the proceedings, in a working language of the Court;

(b) The accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1 (f).

# Chapter 7
# Penalties

## Rule 145
## Determination of sentence

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Commission of the crime with particular cruelty or where there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3;

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

3. Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.

## Rule 146
## Imposition of fines under article 77

1. In determining whether to order a fine under article 77, paragraph 2 (a), and in fixing the amount of the fine, the Court shall determine whether imprisonment is a sufficient penalty. The Court shall give due consideration to the financial capacity of the convicted person, including any orders for forfeiture in accordance with article 77, paragraph 2 (b), and, as appropriate, any orders for reparation in accordance with article 75. The Court shall take into account, in addition to the factors referred to in rule 145, whether and to what degree the crime was motivated by personal financial gain.

2. A fine imposed under article 77, paragraph 2 (a), shall be set at an appropriate level. To this end, the Court shall, in addition to the factors referred to above, in particular take into consideration the damage and injuries caused as well as the proportionate gains derived from the crime by the perpetrator. Under no circumstances may the total amount exceed 75 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

3. In imposing a fine, the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

4. In imposing a fine, the Court may, as an option, calculate it according to a system of daily fines. In such cases, the minimum duration shall be 30 days and the maximum duration five years. The Court shall decide the total amount in accordance with sub-rules 1 and 2. It shall determine the amount of daily payment in the light of the individual circumstances of the convicted person, including the financial needs of his or her dependants.

5. If the convicted person does not pay the fine imposed in accordance with the conditions set above, appropriate measures may be taken by the Court pursuant to rules 217 to 222 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Presidency, on its own motion or at the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort extend the term of imprisonment for a period not to exceed a quarter of such term or five years, whichever is less. In the determination of such period of extension, the Presidency shall take into account the amount of the fine, imposed and paid. Any such extension shall not apply in the case of life imprisonment. The extension may not lead to a total period of imprisonment in excess of 30 years.

6. In order to determine whether to order an extension and the period involved, the Presidency shall sit in camera for the purpose of obtaining the views of the sentenced person and the Prosecutor. The sentenced person shall have the right to be assisted by counsel.

7. In imposing a fine, the Court shall warn the convicted person that failure to pay the fine in accordance with the conditions set out above may result in an extension of the period of imprisonment as described in this rule.

## Rule 147
## Orders of forfeiture

1. In accordance with article 76, paragraphs 2 and 3, and rules 63, sub-rule 1, and 143, at any hearing to consider an order of forfeiture, Chamber shall hear evidence as to the identification and location of specific proceeds, property or assets which have been derived directly or indirectly from the crime.

2. If before or during the hearing, a Chamber becomes aware of any bona fide third party who appears to have an interest in relevant proceeds, property or assets, it shall give notice to that third party.

3. The Prosecutor, the convicted person and any bona fide third party with an interest in the relevant proceeds, property or assets may submit evidence relevant to the issue.

4. After considering any evidence submitted, a Chamber may issue an order of forfeiture in relation to specific proceeds, property or assets if it is satisfied that these have been derived directly or indirectly from the crime.

## Rule 148
## Orders to transfer fines or forfeitures to the Trust Fund

Before making an order pursuant to article 79, paragraph 2, a Chamber may request the representatives of the Fund to submit written or oral observations to it.

# Chapter 8
# Appeal and revision

## Section I
## General provisions

### Rule 149
### Rules governing proceedings in the Appeals Chamber

Parts 5 and 6 and rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

## Section II
## Appeals against convictions, acquittals, sentences and reparation orders

### Rule 150
### Appeal

1. Subject to sub-rule 2, an appeal against a decision of conviction or acquittal under article 74, a sentence under article 76 or a reparation order under article 75 may be filed not later than 30 days from the date on which the party filing the appeal is notified of the decision, the sentence or the reparation order.

2. The Appeals Chamber may extend the time limit set out in sub-rule 1, for good cause, upon the application of the party seeking to file the appeal.

3. The appeal shall be filed with the Registrar.

4. If an appeal is not filed as set out in sub-rules 1 to 3, the decision, the sentence or the reparation order of the Trial Chamber shall become final.

### Rule 151
### Procedure for the appeal

1. Upon the filing of an appeal under rule 150, the Registrar shall transmit the trial record to the Appeals Chamber.

2. The Registrar shall notify all parties who participated in the proceedings before the Trial Chamber that an appeal has been filed.

### Rule 152
### Discontinuance of the appeal

1. Any party who has filed an appeal may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

2. If the Prosecutor has filed an appeal on behalf of a convicted person in accordance with article 81, paragraph 1 (b), before filing any notice of discontinuance, the Prosecutor shall inform the convicted person that he or she intends to discontinue the appeal in order to give him or her the opportunity to continue the appeal proceedings.

### Rule 153
### Judgement on appeals against reparation orders

1. The Appeals Chamber may confirm, reverse or amend a reparation order made under article 75.

2. The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraphs 4 and 5.

## Section III
## Appeals against other decisions

### Rule 154
### Appeals that do not require the leave of the Court

1. An appeal may be filed under article 81, paragraph 3 (c) (ii), or article 82, paragraph 1 (a) or (b), not later than five days from the date upon which the party filing the appeal is notified of the decision.

2. An appeal may be filed under article 82, paragraph 1 (c), not later than two days from the date upon which the party filing the appeal is notified of the decision.

3. Rule 150, sub-rules 3 and 4, shall apply to appeals filed under sub-rules 1 and 2 of this rule.

### Rule 155
### Appeals that require leave of the Court

1. When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within five days of being notified of that decision, make a written application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal.

2. The Chamber shall render a decision and shall notify all parties who participated in the proceedings that gave rise to the decision referred to in sub-rule 1.

### Rule 156
### Procedure for the appeal

1. As soon as an appeal has been filed under rule 154 or as soon as leave to appeal has been granted under rule 155, the Registrar shall transmit to the Appeals Chamber the record of the proceedings of the Chamber that made the decision that is the subject of the appeal.

2. The Registrar shall give notice of the appeal to all parties who participated in the proceedings before the Chamber that gave the decision that is the subject of the appeal, unless they have already been notified by the Chamber under rule 155, sub-rule 2.

3. The appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing.

4. The appeal shall be heard as expeditiously as possible.

5. When filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.

### Rule 157
### Discontinuance of the appeal

Any party who has filed an appeal under rule 154 or who has obtained the leave of a Chamber to appeal a decision under rule 155 may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

### Rule 158
### Judgement on the appeal

1. An Appeals Chamber which considers an appeal referred to in this section may confirm, reverse or amend the decision appealed.

2. The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraph 4.

## Section IV
## Revision of conviction or sentence

### Rule 159
### Application for revision

1. An application for revision provided for in article 84, paragraph 1, shall be in writing and shall set out the grounds on which the revision is sought. It shall as far as possible be accompanied by supporting material.

2. The determination on whether the application is meritorious shall be taken by a majority of the judges of the Appeals Chamber and shall be supported by reasons in writing.

3. Notification of the decision shall be sent to the applicant and, as far as possible, to all the parties who participated in the proceedings related to the initial decision.

## Rule 160
## Transfer for the purpose of revision

1. For the conduct of the hearing provided for in rule 161, the relevant Chamber shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

2. The determination of the Court shall be communicated without delay to the State of enforcement.

3. The provisions of rule 206, sub-rule 3, shall be applicable.

## Rule 161
## Determination on revision

1. On a date which it shall determine and shall communicate to the applicant and to all those having received notification under rule 159, sub-rule 3, the relevant Chamber shall hold a hearing to determine whether the conviction or sentence should be revised.

2. For the conduct of the hearing, the relevant Chamber shall exercise, *mutatis mutandis*, all the powers of the Trial Chamber pursuant to Part 6 and the rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers.

3. The determination on revision shall be governed by the applicable provisions of article 83, paragraph 4.

# Chapter 9
# Offences and misconduct against the Court

## Section 1
## Offences against the administration of justice under article 70

### Rule 162
### Exercise of jurisdiction

1. Before deciding whether to exercise jurisdiction, the Court may consult with States Parties that may have jurisdiction over the offence.

2. In making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:

(a) The availability and effectiveness of prosecution in a State Party;

(b) The seriousness of an offence;

(c) The possible joinder of charges under article 70 with charges under articles 5 to 8;

(d) The need to expedite proceedings;

(e) Links with an ongoing investigation or a trial before the Court; and

(f) Evidentiary considerations.

3. The Court shall give favourable consideration to a request from the host State for a waiver of the power of the Court to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.

4. If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise jurisdiction pursuant to article 70, paragraph 4.

### Rule 163
### Application of the Statute and the Rules

1. Unless otherwise provided in sub-rules 2 and 3, rule 162 and rules 164 to 169, the Statute and the Rules shall apply *mutatis mutandis* to the Court's investigation, prosecution and punishment of offences defined in article 70.

2. The provisions of Part 2, and any rules thereunder, shall not apply, with the exception of article 21.

3. The provisions of Part 10, and any rules thereunder, shall not apply, with the exception of articles 103, 107, 109 and 111.

### Rule 164
### Periods of limitation

1. If the Court exercises jurisdiction in accordance with rule 162, it shall apply the periods of limitation set forth in this rule.

2. Offences defined in article 70 shall be subject to a period of limitation of five years from the date on which the offence was committed, provided that during this period no investigation or prosecution has been initiated. The period of limitation shall be interrupted if an investigation or prosecution has been initiated during this period, either before the Court or by a State Party with jurisdiction over the case pursuant to article 70, paragraph 4 (a).

3. Enforcement of sanctions imposed with respect to offences defined in article 70 shall be subject to a period of limitation of 10 years from the date on which the sanction has become final. The period of limitation shall be interrupted with the detention of the convicted person or while the person concerned is outside the territory of the States Parties.

## Rule 165
## Investigation, prosecution and trial

1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.

2. Articles 53 and 59, and any rules thereunder, shall not apply.

3. For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.

4. A Trial Chamber may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.

## Rule 166
## Sanctions under article 70

1. If the Court imposes sanctions with respect to article 70, this rule shall apply.

2. Article 77, and any rules thereunder, shall not apply, with the exception of an order of forfeiture under article 77, paragraph 2 (b), which may be ordered in addition to imprisonment or a fine or both.

3. Each offence may be separately fined and those fines may be cumulative. Under no circumstances may the total amount exceed 50 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

4. In imposing a fine the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

5. If the convicted person does not pay a fine imposed in accordance with the conditions set forth in sub-rule 4, appropriate measures may be taken by the Court pursuant to rules 217 to 222 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Court, on its own motion or at the request of the

Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort impose a term of imprisonment in accordance with article 70, paragraph 3. In the determination of such term of imprisonment, the Court shall take into account the amount of fine paid.

### Rule 167
### International cooperation and judicial assistance

1. With regard to offences under article 70, the Court may request a State to provide any form of international cooperation or judicial assistance corresponding to those forms set forth in Part 9. In any such request, the Court shall indicate that the basis for the request is an investigation or prosecution of offences under article 70.

2. The conditions for providing international cooperation or judicial assistance to the Court with respect to offences under article 70 shall be those set forth in article 70, paragraph 2.

### Rule 168
### *Ne bis in idem*

In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court.

### Rule 169
### Immediate arrest

In the case of an alleged offence under article 70 committed in the presence of a Chamber, the Prosecutor may orally request that Chamber to order the immediate arrest of the person concerned.

## Section II
## Misconduct before the Court under article 71

### Rule 170
### Disruption of proceedings

Having regard to article 63, paragraph 2, the Presiding Judge of the Chamber dealing with the matter may, after giving a warning:

(a) Order a person disrupting the proceedings of the Court to leave or be removed from the courtroom; or,

(b) In case of repeated misconduct, order the interdiction of that person from attending the proceedings.

## Rule 171
## Refusal to comply with a direction by the Court

1. When the misconduct consists of deliberate refusal to comply with an oral or written direction by the Court, not covered by rule 170, and that direction is accompanied by a warning of sanctions in case of breach, the Presiding Judge of the Chamber dealing with the matter may order the interdiction of that person from the proceedings for a period not exceeding 30 days or, if the misconduct is of a more serious nature, impose a fine.

2. If the person committing misconduct as described in sub-rule 1 is an official of the Court, or a defence counsel, or a legal representative of victims, the Presiding Judge of the Chamber dealing with the matter may also order the interdiction of that person from exercising his or her functions before the Court for a period not exceeding 30 days.

3. If the Presiding Judge in cases under sub-rules 1 and 2 considers that a longer period of interdiction is appropriate, the Presiding Judge shall refer the matter to the Presidency, which may hold a hearing to determine whether to order a longer or permanent period of interdiction.

4. A fine imposed under sub-rule 1 shall not exceed 2,000 euros, or the equivalent amount in any currency, provided that in cases of continuing misconduct, a new fine may be imposed on each day that the misconduct continues, and such fines shall be cumulative.

5. The person concerned shall be given an opportunity to be heard before a sanction for misconduct, as described in this rule, is imposed.

## Rule 172
## Conduct covered by both articles 70 and 71

If conduct covered by article 71 also constitutes one of the offences defined in article 70, the Court shall proceed in accordance with article 70 and rules 162 to 169.

# Chapter 10
# Compensation to an arrested or convicted person

## Rule 173
## Request for compensation

1. Anyone seeking compensation on any of the grounds indicated in article 85 shall submit a request, in writing, to the Presidency, which shall designate a Chamber composed of three judges to consider the request. These judges shall not have participated in any earlier judgement of the Court regarding the person making the request.

2. The request for compensation shall be submitted not later than six months from the date the person making the request was notified of the decision of the Court concerning:

(a) The unlawfulness of the arrest or detention under article 85, paragraph 1;

(b) The reversal of the conviction under article 85, paragraph 2;

(c) The existence of a grave and manifest miscarriage of justice under article 85, paragraph 3.

3. The request shall contain the grounds and the amount of compensation requested.

4. The person requesting compensation shall be entitled to legal assistance.

## Rule 174
## Procedure for seeking compensation

1. A request for compensation and any other written observation by the person filing the request shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing. Any observations by the Prosecutor shall be notified to the person filing the request.

2. The Chamber designated under rule 173, sub-rule 1, may either hold a hearing or determine the matter on the basis of the request and any written observations by the Prosecutor and the person filing the request. A hearing shall be held if the Prosecutor or the person seeking compensation so requests.

3. The decision shall be taken by the majority of the judges. The decision shall be notified to the Prosecutor and to the person filing the request.

## Rule 175
## Amount of compensation

In establishing the amount of any compensation in conformity with article 85, paragraph 3, the Chamber designated under rule 173, sub-rule 1, shall take into consideration the consequences of the grave and manifest miscarriage of justice on the personal, family, social and professional situation of the person filing the request.

# Chapter 11
# International cooperation and judicial assistance

## Section 1
## Requests for cooperation under article 87

### Rule 176
### Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance

1. Upon and subsequent to the establishment of the Court, the Registrar shall obtain from the Secretary-General of the United Nations any communication made by States pursuant to article 87, paragraphs 1 (a) and 2.

2. The Registrar shall transmit the requests for cooperation made by the Chambers and shall receive the responses, information and documents from requested States. The Office of the Prosecutor shall transmit the requests for cooperation made by the Prosecutor and shall receive the responses, information and documents from requested States.

3. The Registrar shall be the recipient of any communication from States concerning subsequent changes in the designation of the national channels charged with receiving requests for cooperation, as well as of any change in the language in which requests for cooperation should be made, and shall, upon request, make such information available to States Parties as may be appropriate.

4. The provisions of sub-rule 2 are applicable *mutatis mutandis* where the Court requests information, documents or other forms of cooperation and assistance from an intergovernmental organization.

5. The Registrar shall transmit any communications referred to in sub-rules 1 and 3 and rule 177, sub-rule 2, as appropriate, to the Presidency or the Office of the Prosecutor, or both.

### Rule 177
### Channels of communication

1. Communications concerning the national authority charged with receiving requests for cooperation made upon ratification, acceptance, approval or accession shall provide all relevant information about such authorities.

2. When an intergovernmental organization is asked to assist the Court under article 87, paragraph 6, the Registrar shall, when necessary, ascertain its designated channel of communication and obtain all relevant information relating thereto.

### Rule 178
### Language chosen by States Parties under article 87, paragraph 2

1. When a requested State Party has more than one official language, it may indicate upon ratification, acceptance, approval or accession that requests for cooperation and any supporting documents can be drafted in any one of its official languages.

2. When the requested State Party has not chosen a language for communication with the Court upon ratification, acceptance, accession or approval, the request for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court pursuant to article 87, paragraph 2.

### Rule 179
### Language of requests directed to States not party to the Statute

When a State not party to the Statute has agreed to provide assistance to the Court under article 87, paragraph 5, and has not made a choice of language for such requests, the requests for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court.

### Rule 180
### Changes in the channels of communication or the languages of requests for cooperation

1. Changes concerning the channel of communication or the language a State has chosen under article 87, paragraph 2, shall be communicated in writing to the Registrar at the earliest opportunity.

2. Such changes shall take effect in respect of requests for cooperation made by the Court at a time agreed between the Court and the State or, in the absence of such an agreement, 45 days after the Court has received the communication and, in all cases, without prejudice to current requests or requests in progress.

## Section II
## Surrender, transit and competing requests under articles 89 and 90

### Rule 181
### Challenge to admissibility of a case before a national court

When a situation described in article 89, paragraph 2, arises, and without prejudice to the provisions of article 19 and of rules 58 to 62 on procedures applicable to challenges to the jurisdiction of the Court or the admissibility of a case, the Chamber dealing with the case, if the admissibility ruling is still pending, shall take steps to obtain from the requested State all the relevant information about the *ne bis in idem* challenge brought by the person.

### Rule 182
### Request for transit under article 89, paragraph 3 (e)

1. In situations described in article 89, paragraph 3 (e), the Court may transmit the request for transit by any medium capable of delivering a written record.

2. When the time limit provided for in article 89, paragraph 3 (e), has expired and the person concerned has been released, such a release is without prejudice to a subsequent arrest of the person in accordance with the provisions of article 89 or article 92.

### Rule 183
### Possible temporary surrender

Following the consultations referred to in article 89, paragraph 4, the requested State may temporarily surrender the person sought in accordance with conditions determined between the requested State and the Court. In such case the person shall be kept in custody during his or her presence before the Court and shall be transferred to the requested State once his or her presence before the Court is no longer required, at the latest when the proceedings have been completed.

### Rule 184
### Arrangements for surrender

1. The requested State shall immediately inform the Registrar when the person sought by the Court is available for surrender.

2. The person shall be surrendered to the Court by the date and in the manner agreed upon between the authorities of the requested State and the Registrar.

3. If circumstances prevent the surrender of the person by the date agreed, the authorities of the requested State and the Registrar shall agree upon a new date and manner by which the person shall be surrendered.

4. The Registrar shall maintain contact with the authorities of the host State in relation to the arrangements for the surrender of the person to the Court.

### Rule 185
### Release of a person from the custody of the Court other than upon completion of sentence

1. Subject to sub-rule 2, where a person surrendered to the Court is released from the custody of the Court because the Court does not have jurisdiction, the case is inadmissible under article 17, paragraph 1 (b), (c) or (d), the charges have not been confirmed under article 61, the person has been acquitted at trial or on appeal, or for any other reason, the Court shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State. In this case, the host State shall

facilitate the transfer in accordance with the agreement referred to in article 3, paragraph 2, and the related arrangements.

2. Where the Court has determined that the case is inadmissible under article 17, paragraph 1 (a), the Court shall make arrangements, as appropriate, for the transfer of the person to a State whose investigation or prosecution has formed the basis of the successful challenge to admissibility, unless the State that originally surrendered the person requests his or her return.

### Rule 186
### Competing requests in the context of a challenge to the admissibility of the case

In situations described in article 90, paragraph 8, the requested State shall provide the notification of its decision to the Prosecutor in order to enable him or her to act in accordance with article 19, paragraph 10.

## Section III
## Documents for arrest and surrender under articles 91 and 92

### Rule 187
### Translation of documents accompanying request for surrender

For the purposes of article 67, paragraph 1 (a), and in accordance with rule 117, sub-rule 1, the request under article 91 shall be accompanied, as appropriate, by a translation of the warrant of arrest or of the judgement of conviction and by a translation of the text of any relevant provisions of the Statute, in a language that the person fully understands and speaks.

### Rule 188
### Time limit for submission of documents after provisional arrest

For the purposes of article 92, paragraph 3, the time limit for receipt by the requested State of the request for surrender and the documents supporting the request shall be 60 days from the date of the provisional arrest.

### Rule 189
### Transmission of documents supporting the request

When a person has consented to surrender in accordance with the provisions of article 92, paragraph 3, and the requested State proceeds to surrender the person to the Court, the Court shall not be required to provide the documents described in article 91 unless the requested State indicates otherwise.

## Section IV
## Cooperation under article 93

### Rule 190
### Instruction on self-incrimination accompanying request for witness

When making a request under article 93, paragraph 1 (e), with respect to a witness, the Court shall annex an instruction, concerning rule 74 relating to self-incrimination, to be provided to the witness in question, in a language that the person fully understands and speaks.

### Rule 191
### Assurance provided by the Court under article 93, paragraph 2

The Chamber dealing with the case, on its own motion or at the request of the Prosecutor, defence or witness or expert concerned, may decide, after taking into account the views of the Prosecutor and the witness or expert concerned, to provide the assurance described in article 93, paragraph 2.

### Rule 192
### Transfer of a person in custody

1. Transfer of a person in custody to the Court in accordance with article 93, paragraph 7, shall be arranged by the national authorities concerned in liaison with the Registrar and the authorities of the host State.

2. The Registrar shall ensure the proper conduct of the transfer, including the supervision of the person while in the custody of the Court.

3. The person in custody before the Court shall have the right to raise matters concerning the conditions of his or her detention with the relevant Chamber.

4. In accordance with article 93, paragraph 7 (b), when the purposes of the transfer have been fulfilled, the Registrar shall arrange for the return of the person in custody to the requested State.

### Rule 193
### Temporary transfer of the person from the State of enforcement

1. The Chamber that is considering the case may order the temporary transfer from the State of enforcement to the seat of the Court of any person sentenced by the Court whose testimony or other assistance is necessary to the Court. The provisions of article 93, paragraph 7, shall not apply.

2. The Registrar shall ensure the proper conduct of the transfer, in liaison with the authorities of the State of enforcement and the authorities of the host State. When the purposes of the transfer have been fulfilled, the Court shall return the sentenced person to the State of enforcement.

3. The person shall be kept in custody during his or her presence before the Court. The entire period of detention spent at the seat of the Court shall be deducted from the sentence remaining to be served.

### Rule 194
### Cooperation requested from the Court

1. In accordance with article 93, paragraph 10, and consistent with article 96, mutatis mutandis, a State may transmit to the Court a request for cooperation or assistance to the Court, either in or accompanied by a translation into one of the working languages of the Court.

2. Requests described in sub-rule 1 are to be sent to the Registrar, which shall transmit them, as appropriate, either to the Prosecutor or to the Chamber concerned.

3. If protective measures within the meaning of article 68 have been adopted, the Prosecutor or Chamber, as appropriate, shall consider the views of the Chamber which ordered the measures as well as those of the relevant victim or witness, before deciding on the request.

4. If the request relates to documents or evidence as described in article 93, paragraph 10 (b) (ii), the Prosecutor or Chamber, as appropriate, shall obtain the written consent of the relevant State before proceeding with the request.

5. When the Court decides to grant the request for cooperation or assistance from a State, the request shall be executed, insofar as possible, following any procedure outlined therein by the requesting State and permitting persons specified in the request to be present.

## Section V
## Cooperation under article 98

### Rule 195
### Provision of information

1. When a requested State notifies the Court that a request for surrender or assistance raises a problem of execution in respect of article 98, the requested State shall provide any information relevant to assist the Court in the application of article 98. Any concerned third State or sending State may provide additional information to assist the Court.

2. The Court may not proceed with a request for the surrender of a person without the consent of a sending State if, under article 98, paragraph 2, such a request would be inconsistent with obligations under an international agreement pursuant to which the consent of a sending State is required prior to the surrender of a person of that State to the Court.

## Section VI
## Rule of speciality under article 101

### Rule 196
### Provision of views on article 101, paragraph 1

A person surrendered to the Court may provide views on a perceived violation of the provisions of article 101, paragraph 1.

### Rule 197
### Extension of the surrender

When the Court has requested a waiver of the requirements of article 101, paragraph 1, the requested State may ask the Court to obtain and provide the views of the person surrendered to the Court.

# Chapter 12
# Enforcement

## Section I
## Role of States in enforcement of sentences of imprisonment and change in designation of State of enforcement under articles 103 and 104

### Rule 198
### Communications between the Court and States

Unless the context otherwise requires, article 87 and rules 176 to 180 shall apply, as appropriate, to communications between the Court and a State on matters relating to enforcement of sentences.

### Rule 199
### Organ responsible under Part 10

Unless provided otherwise in the Rules, the functions of the Court under Part 10 shall be exercised by the Presidency.

### Rule 200
### List of States of enforcement

1. A list of States that have indicated their willingness to accept sentenced persons shall be established and maintained by the Registrar.

2. The Presidency shall not include a State on the list provided for in article 103, paragraph 1 (a), if it does not agree with the conditions that such a State attaches to its acceptance. The Presidency may request any additional information from that State prior to taking a decision.

3. A State that has attached conditions of acceptance may at any time withdraw such conditions. Any amendments or additions to such conditions shall be subject to confirmation by the Presidency.

4. A State may at any time inform the Registrar of its withdrawal from the list. Such withdrawal shall not affect the enforcement of the sentences in respect of persons that the State has already accepted.

5. The Court may enter bilateral arrangements with States with a view to establishing a framework for the acceptance of prisoners sentenced by the Court. Such arrangements shall be consistent with the Statute.

### Rule 201
### Principles of equitable distribution

Principles of equitable distribution for purposes of article 103, paragraph 3, shall include:

(a) The principle of equitable geographical distribution;

(b) The need to afford each State on the list an opportunity to receive sentenced persons;

(c) The number of sentenced persons already received by that State and other States of enforcement;

(d) Any other relevant factors.

### Rule 202
### Timing of delivery of the sentenced person to the State of enforcement

The delivery of a sentenced person from the Court to the designated State of enforcement shall not take place unless the decision on the conviction and the decision on the sentence have become final.

### Rule 203
### Views of the sentenced person

1. The Presidency shall give notice in writing to the sentenced person that it is addressing the designation of a State of enforcement. The sentenced person shall, within such time limit as the Presidency shall prescribe, submit in writing his or her views on the question to the Presidency.

2. The Presidency may allow the sentenced person to make oral presentations.

3. The Presidency shall allow the sentenced person:

(a) To be assisted, as appropriate, by a competent interpreter and to benefit from any translation necessary for the presentation of his or her views;

(b) To be granted adequate time and facilities necessary to prepare for the presentation of his or her views.

### Rule 204
### Information relating to designation

When the Presidency notifies the designated State of its decision, it shall also transmit the following information and documents:

(a) The name, nationality, date and place of birth of the sentenced person;

(b) A copy of the final judgement of conviction and of the sentence imposed;

(c) The length and commencement date of the sentence and the time remaining to be served;

(d) After having heard the views of the sentenced person, any necessary information concerning the state of his or her health, including any medical treatment that he or she is receiving.

## Rule 205
## Rejection of designation in a particular case

Where a State in a particular case rejects the designation by the Presidency, the Presidency may designate another State.

## Rule 206
## Delivery of the sentenced person to the State of enforcement

1. The Registrar shall inform the Prosecutor and the sentenced person of the State designated to enforce the sentence.

2. The sentenced person shall be delivered to the State of enforcement as soon as possible after the designated State of enforcement accepts.

3. The Registrar shall ensure the proper conduct of the delivery of the person in consultation with the authorities of the State of enforcement and the host State.

## Rule 207
## Transit

1. No authorization is required if the sentenced person is transported by air and no landing is scheduled on the territory of the transit State. If an unscheduled landing occurs on the territory of the transit State, that State shall, to the extent possible under the procedure of national law, detain the sentenced person in custody until a request for transit as provided in sub-rule 2 or a request under article 89, paragraph 1, or article 92 is received.

2. To the extent possible under the procedure of national law, a State Party shall authorize the transit of a sentenced person through its territory and the provisions of article 89, paragraph 3 (b) and (c), and articles 105 and 108 and any rules relating thereto shall, as appropriate, apply. A copy of the final judgement of conviction and of the sentence imposed shall be attached to such request for transit.

## Rule 208
## Costs

1. The ordinary costs for the enforcement of the sentence in the territory of the State of enforcement shall be borne by that State.

2. Other costs, including those for the transport of the sentenced person and those referred to in article 100, paragraph 1 (c), (d) and (e), shall be borne by the Court.

### Rule 209
### Change in designation of State of enforcement

1. The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may at any time act in accordance with article 104, paragraph 1.

2. The request of the sentenced person or of the Prosecutor shall be made in writing and shall set out the grounds upon which the transfer is sought.

### Rule 210
### Procedure for change in the designation of a State of enforcement

1. Before deciding to change the designation of a State of enforcement, the Presidency may:

(a) Request views from the State of enforcement;

(b) Consider written or oral presentations of the sentenced person and the Prosecutor;

(c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;

(d) Obtain any other relevant information from any reliable sources.

2. The provisions of rule 203, sub-rule 3, shall apply, as appropriate.

3. If the Presidency refuses to change the designation of the State of enforcement, it shall, as soon as possible, inform the sentenced person, the Prosecutor and the Registrar of its decision and of the reasons therefor. It shall also inform the State of enforcement.

## Section II
## Enforcement, supervision and transfer under articles 105, 106 and 107

### Rule 211
### Supervision of enforcement of sentences and conditions of imprisonment

1. In order to supervise the enforcement of sentences of imprisonment, the Presidency:

(a) Shall, in consultation with the State of enforcement, ensure that in establishing appropriate arrangements for the exercise by any sentenced person of his or her right to communicate with the Court about the conditions of imprisonment, the provisions of article 106, paragraph 3, shall be respected;

(b) May, when necessary, request any information, report or expert opinion from the State of enforcement or from any reliable sources;

(c) May, where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced person and hearing his or her views, without the presence of national authorities;

(d) May, where appropriate, give the State of enforcement an opportunity to comment on the views expressed by the sentenced person under sub-rule 1 (c).

2. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the State of enforcement which may entail some activity outside the prison facility, the State of enforcement shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

### Rule 212
### Information on location of the person for enforcement of fines, forfeitures or reparation measures

For the purpose of enforcement of fines and forfeiture measures and of reparation measures ordered by the Court, the Presidency may, at any time or at least 30 days before the scheduled completion of the sentence served by the sentenced person, request the State of enforcement to transmit to it the relevant information concerning the intention of that State to authorize the person to remain in its territory or the location where it intends to transfer the person.

### Rule 213
### Procedure for article 107, paragraph 3

With respect to article 107, paragraph 3, the procedure set out in rules 214 and 215 shall apply, as appropriate.

## Section III
## Limitation on the prosecution or punishment of other offences under article 108

### Rule 214
### Request to prosecute or enforce a sentence for prior conduct

1. For the application of article 108, when the State of enforcement wishes to prosecute or enforce a sentence against the sentenced person for any conduct engaged in prior to that person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:

(a) A statement of the facts of the case and their legal characterization;

(b) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;

(c) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;

(d) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

2. In the event of a request for extradition made by another State, the State of enforcement shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

3. The Presidency may in all cases request any document or additional information from the State of enforcement or the State requesting extradition.

4. If the person was surrendered to the Court by a State other than the State of enforcement or the State seeking extradition, the Presidency shall consult with the State that surrendered the person and take into account any views expressed by that State.

5. Any information or documents transmitted to the Presidency under sub-rules 1 to 4 shall be transmitted to the Prosecutor, who may comment.

6. The Presidency may decide to conduct a hearing.

## Rule 215
## Decision on request to prosecute or enforce a sentence

1. The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.

2. If the request submitted under sub-rules 1 or 2 of rule 214 concerns the enforcement of a sentence, the sentenced person may serve that sentence in the State designated by the Court to enforce the sentence pronounced by it or be extradited to a third State only after having served the full sentence pronounced by the Court, subject to the provisions of article 110.

3. The Presidency may authorize the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to the State responsible for enforcement of the sentence pronounced by the Court, after the prosecution.

## Rule 216
## Information on enforcement

The Presidency shall request the State of enforcement to inform it of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his or her transfer.

# Section IV
# Enforcement of fines, forfeiture measures and reparation orders

## Rule 217
## Cooperation and measures for enforcement of fines, forfeiture or reparation orders

For the enforcement of fines, forfeiture or reparation orders, the Presidency shall, as appropriate, seek cooperation and measures for enforcement in accordance with Part 9, as well as transmit copies of relevant orders to any State with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connection. The Presidency shall, as appropriate, inform the State of any third-party claims or of the fact that no claim was presented by a person who received notification of any proceedings conducted pursuant to article 75.

## Rule 218
## Orders for forfeiture and reparations

1. In order to enable States to give effect to an order for forfeiture, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) The proceeds, property and assets that have been ordered by the Court to be forfeited; and

(c) That if the State Party is unable to give effect to the order for forfeiture in relation to the specified proceeds, property or assets, it shall take measures to recover the value of the same.

2. In the request for cooperation and measures for enforcement, the Court shall also provide available information as to the location of the proceeds, property and assets that are covered by the order for forfeiture.

3. In order to enable States to give effect to an order for reparations, the order shall specify:

(a) The identity of the person against whom the order has been issued;

(b) In respect of reparations of a financial nature, the identity of the victims to whom individual reparations have been granted, and, where the award for reparations shall be deposited with the Trust Fund, the particulars of the Trust Fund for the deposit of the award; and

(c) The scope and nature of the reparations ordered by the Court, including, where applicable, the property and assets for which restitution has been ordered.

4. Where the Court awards reparations on an individual basis, a copy of the reparation order shall be transmitted to the victim concerned.

## Rule 219
## Non-modification of orders for reparation

The Presidency shall, when transmitting copies of orders for reparations to States Parties under rule 217, inform them that, in giving effect to an order for reparations, the national authorities shall not modify the reparations specified by the Court, the scope or the extent of any damage, loss or injury determined by the Court or the principles stated in the order, and shall facilitate the enforcement of such order.

## Rule 220
## Non-modification of judgements in which fines were imposed

When transmitting copies of judgements in which fines were imposed to States Parties for the purpose of enforcement in accordance with article 109 and rule 217, the Presidency shall inform them that in enforcing the fines imposed, national authorities shall not modify them.

## Rule 221
## Decision on disposition or allocation of property or assets

1. The Presidency shall, after having consulted, as appropriate, with the Prosecutor, the sentenced person, the victims or their legal representatives, the national authorities of the State of enforcement or any relevant third party, or representatives of the Trust Fund provided for in article 79, decide on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court.

2. In all cases, when the Presidency decides on the disposition or allocation of property or assets belonging to the sentenced person, it shall give priority to the enforcement of measures concerning reparations to victims.

## Rule 222
## Assistance for service or any other measure

The Presidency shall assist the State in the enforcement of fines, forfeiture or reparation orders, as requested, with the service of any relevant notification on the sentenced person or any other relevant persons, or the carrying out of any other measures necessary for the enforcement of the order under the procedure of the national law of the enforcement State.

## Section V
## Review concerning reduction of sentence under article 110

### Rule 223
### Criteria for review concerning reduction of sentence

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the three judges of the Appeals Chamber shall take into account the criteria listed in article 110, paragraph 4 (a) and (b), and the following criteria:

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;

(b) The prospect of the resocialization and successful resettlement of the sentenced person;

(c) Whether the early release of the sentenced person would give rise to significant social instability;

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

### Rule 224
### Procedure for review concerning reduction of sentence

1. For the application of article 110, paragraph 3, three judges of the Appeals Chamber appointed by that Chamber shall conduct a hearing, unless they decide otherwise in a particular case, for exceptional reasons. The hearing shall be conducted with the sentenced person, who may be assisted by his or her counsel, with interpretation, as may be required. Those three judges shall invite the Prosecutor, the State of enforcement of any penalty under article 77 or any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings, to participate in the hearing or to submit written observations. Under exceptional circumstances, this hearing may be conducted by way of a videoconference or in the State of enforcement by a judge delegated by the Appeals Chamber.

2. The same three judges shall communicate the decision and the reasons for it to all those who participated in the review proceedings as soon as possible.

3. For the application of article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. In case of a significant change in circumstances, those three judges may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the three judges.

4. For any review under article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall invite written representations from the sentenced person or his or her counsel, the Prosecutor, the State of enforcement of any penalty under article 77 and any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings. The three judges may also decide to hold a hearing.

5. The decision and the reasons for it shall be communicated to all those who participated in the review proceedings as soon as possible.

## Section VI
## Escape

### Rule 225
### Measures under article 111 in the event of escape

1. If the sentenced person has escaped, the State of enforcement shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record. The Presidency shall then proceed in accordance with Part 9.

2. However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 207. The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

3. If the sentenced person is surrendered to the Court pursuant to Part 9, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and rules 203 to 206, designate another State, including the State to the territory of which the sentenced person has fled.

4. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where sub-rule 3 is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.